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# STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

## ORGANIZATION TELEVISION IN LEGISLATURE

WEDNESDAY, APRIL 30, 1986





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Jonsson, J. M. (Wellington-Dufferin-Peel PC)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Polsinelli, C. (Yorkview L) for Mr. Morin

Also taking part:

Gigantes, E. (Ottawa Centre NDP)

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Director of Administration:

Mitchinson, T., Director, Information Services Branch

From Coopers and Lybrand Consulting Group:

Applin, M., Consultant

From Bellair Communications Ltd.:

Somerville, W., Consultant

ERRATUM: In issue P-42 (standing committee on procedural affairs and agencies, boards and commissions; March 27, 1986), line 4 of the last paragraph on page 16 should read "we meet it already in the human resources department." Also, the last line of paragraph 4 on page 17 should read "we did not hit any area of concern."



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, April 30, 1986

The committee met at 3:44 p.m. in room 228.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect one of your number as chairman. May I have the nominations.

Mr. Newman has moved that Mr. Breaugh take the chair as chairman of the committee. Are there any further nominations? There being no further nominations, I declare nominations closed and Mr. Breaugh duly elected chairman.

Mr. Chairman: I thank you for the wonderful way you conducted yourselves during the course of that election. You really did us proud.

Nominations are open for the position of vice-chairman.

Mr. Treleaven: Is that preordained to be a Grit? Claudio, here is your chance. He would like to accept if nominated.

Mr. Turner: Claudio would make it.

Mr. Warner: I nominate Remo.

Mr. Chairman: We have a nomination for Mr. Mancini.

Mr. Treleaven: Claudio Mancini. That does not sound right.

Mr. Chairman: Are there any further nominations? Mr. Mancini is the vice-chairman.

I have never in my life seen a former Speaker and a chairman of the committee of the whole House act so unparliamentary.

Mr. Turner: Claudio wanted it.

Mr. Treleaven: Is there a deputy chairman opening here?

Mr. Chairman: There is if the meeting is long enough.

We need a motion for transcription services, having Hansard.

Mr. Warner: I so move.

Mr. Chairman: Mr. Warner moves that unless otherwise ordered a transcript be made of all committee hearings.

Motion agreed to.

Mr. Polsinelli: Can we now have our acceptance speech from the chairman?



Mr. Chairman: That comes later. We do that offshore.

We are going to consider Bill 34 this afternoon. Before we get too far along on this, I want to report to you that I made a request of the House leaders for additional committee sitting time, especially for the beginning of the spring session. If we are to continue with Bill 34, it is readily apparent that unless we get some additional sitting time, we will not proceed very far with this bill. We have enough public hearings lined up to take us through a month or two months at one sitting a week.

We made the request and it was agreed to, but somehow between the agreement of the House leaders to do that and the formal motion as to when committees sit, we lost one session. We will put that to the House leaders again tomorrow and try to rectify it. As of this moment, we have permission to sit on Wednesday afternoon only. We have asked for Thursday morning or some other time allocation. There is a possibility of sitting Monday evening with unanimous consent. We may have to do that in order to have some public hearings. I anticipate one or two evening sessions at the most will accommodate any people who want to testify on the bill, but we will not normally sit on Monday nights. Any comments from anyone on that?

Mr. Mancini: Why can we not decide ourselves when we want to sit.

Mr. Chairman: We need a motion from the House, which allocates the time for committees to sit.

Mr. Warner: I thought we had permission.

Mr. Chairman: No, we do not.

Mr. Martel: It is my understanding that permission to sit can be simultaneous with other committees that are already sitting. If you want to sit on a Monday or Tuesday night, go right to it, but--

Mr. Chairman: To put it bluntly, I do not want to sit a lot of evenings. I am not about to sit on Tuesday morning or Wednesday morning or any other time. We are talking about sitting concurrently with the Legislature. I hope we will have this problem resolved by next week. In scheduling hearings for Bill 34, we may have to hold off on that for a little while. We can schedule some for next Wednesday afternoon and proceed from there.

Mr. Warner: You are going to request a Thursday morning sitting on a regular basis?

Mr. Chairman: Yes.

Mr. Warner: That is fine.

Mr. Chairman: Any other comments?

3:50 p.m.

Mr. J. M. Johnson: I have a problem. Some of my caucus colleagues and I would like to return to the House because our leader is speaking.

Mr. Chairman: I would like to get through this agenda as quickly as we can so you can do that. I will appreciate it if you can stay around for a few moments while we make a couple of decisions.

I want to raise this item as well. We have had a request from a witness for assistance with travel. The committee can do that. We have not done it before. We do not have a budget right now, but I hope we will have a budget put together shortly. We will put that to the Board of Internal Economy. There may be ways and means of financing this.

I believe air fare from Ottawa is being requested, which costs about \$200. I need a motion or some direction from the committee before I proceed to do that. It has not been the practise to provide witnesses with expenses, but the witness in question is an acknowledged expert on freedom of information and it may very well be worth while for the committee to hear this person.

Mr. Polsinelli: I am not sure whether this committee has taken this under consideration, but I suggest that special facilities and services be provided for the handicapped, especially the people who are deaf and who may need the assistance of interpreters. We have done that in a number of other committees in which I was participating.

Mr. Chairman: We have done that here too.

Mr. J. M. Johnson: On the item to which you referred, I would like to set it aside until the next meeting and give some opportunity to determine it. This is a precedent, is it not?

Mr. Chairman: No.

Mr. J. M. Johnson: It has been done before?

Mr. Chairman: Yes. It has been done by other committees.

Mr. J. M. Johnson: I withdraw it then. I thought this was the first time.

Mr. Chairman: Is it your pleasure we do that?

Mr. Turner: Just out of curiosity, is this a case of hardship or a request?

Mr. Chairman: It is a request from someone who is considered to be an expert in the field and is in lieu of a fee.

Is there any further discussion on this? Is it agreed we will do that?

Mr. Mancini: Is that normal practice? Have we done it before? Are we setting a precedent?

Mr. Chairman: It is not exactly a precedent in that other committees have done this type of thing. It is a bit unusual in the sense that most witnesses do not ask for expenses. For example, we have on occasion called people before us and have paid for their plane fare or offered them some kind of an amount to offset expenses. It is not that unusual.

Mr. Mancini: How are we going to decide in the future who we are going to help?

Mr. Chairman: That is why I raised it with the committee. It should be a committee's decision to do that. As chairman, I do not want to put in the position of offering to cover the expenses of one person and saying to the next one, "We are not going to do that for you."



Mr. Treleaven: Can we have the name of the person and a bit of the person's background?

Mr. Chairman: His name is Ken Rubin. He is a writer and, I am told, someone who is seen to be an expert in the field.

Ms. Gigantes: If I may speak to that, I know Ken Rubin from Ottawa. He is a freelance freedom of information expert and he has done a lot of work associated with newspapers, Southam Press and the Ottawa Citizen, in particular. For example, he has been called by the Department of Justice as one of the people who was asked to review its freedom of information legislation, given its three years of operation. He was a guest panellist at the justice committee conference recently in Ottawa on freedom of information. He is one of the acknowledged experts. He does not represent a large organization that can pay his fees as in the case of many of our other presenters. I believe the request is very reasonable in this circumstance.

Mr. Treleaven: Do you think he is someone whose testimony would be of extreme value to this committee?

Ms. Gigantes: As a member of this committee, I would. If he had not submitted to appear before this committee, I would have suggested that the committee try to call him.

Mr. Newman: Do you have a biography on him?

Mr. Chairman: We can get one for you.

Is there any further discussion on this? Is it agreed that we will offer to meet his transportation costs?

Agreed to.

Mr. Chairman: The next item is the draft report on appointments in the public sector, which is now ready. John, have you got that? Do the members have it?

We have a draft report here which has been prepared along the lines we discussed. I have not had a chance to read it, but I believe you will find it at least addresses concerns that members brought up. The problem I have now is, as I understand it, we do not want to go through this clause by clause now, because of other items that are going on. Members have now received it; the committee is in open session. I consider this to be now a public document. That will allow members of the committee to circulate it among their own caucuses and to discuss it freely without any fear or concern at all that they might be leaking a confidential document. The status of the document, in my opinion, is it has been tabled at a committee hearing; it is now a public document; it is there for discussion purposes. We will come back to that probably in the near future and go through that and adopt it, rearrange it or whatever.

Mr. Mancini: Now that we are tabling this document and making it public, I believe it should be made very clear to whomever asks that this is more or less a compilation of ideas that was brought forward by the committee members as a whole and it in no way represents any final decisions or any majority or minority feeling on the committee.

I would hate to have this document put in the public domain without that kind of rider on it because, as we go through the process, if there are disagreements, it may appear as if some people are changing their minds or different members on the committee are changing their minds. It is very important for me, as far as I am concerned, and maybe for all the committee members, to have it stated very clearly that this is a compilation of ideas that has not in any way been reached as a conclusion by a majority or a minority of the committee. I think that should be right on the first page.

Mr. Chairman: One of the reasons I wanted to do this with Hansard being kept is that I did want it made clear it is a draft. It has not been voted on by the committee and it is tabled before the committee for our consideration now. It has no status other than that. That is understood.

Mr. Mancini: It is even more than that, Mr. Chairman.

Mr. Chairman: What is more than that?

Mr. Martel: It is a working document.

Mr. Chairman: I am trying to address the need that members stated, that when this draft was put together they would have an opportunity to consult freely and widely with people in their own caucuses. One of the only ways that I could think of doing that was to table it when the committee was in session and to establish clearly that it is a draft, it is a working document, it is a matter that will be discussed and voted upon by the committee, but as of now it has only the status of a draft document. All right?

Mr. J. M. Johnson: That is clear.

Mr. Warner: When are you proposing that we deal with this? Are you suggesting after we have done Bill 34 or while we are doing Bill 34?

Mr. Chairman: I am suggesting that I would very much like this matter dealt with by the committee since it has been on our agenda for some time. At our earliest convenience, I would like us to begin to go through this. The purpose of tabling the document today is to provide people with an opportunity to consult. Obviously, I have to schedule a week or so when you can talk to other people in your caucus or whatever. I think that probably after the next week or so we will be able to proceed through it.

#### TELEVISION IN LEGISLATURE

Mr. Chairman: We have had a request for television operation guidelines. At this point, if there are those who would like to attend to business in the House, I suggest they do that. I would, however, like some members of the committee to stay as the purpose of the exercise is to get some input from the members.

4 p.m.

Mr. Applin and Mr. Mitchinson, would you like to come up. Have the members received the proposed television operating procedures? Mr. Mitchinson, will you start off by telling us what you have in mind.

Mr. Mitchinson: I think you all know Mr. Applin, who is the consultant working on the project. The other gentleman is Bill Somerville, whom we hired to be the director of the broadcast for the spring session.



when we were setting up our operating procedures for how to cover the spring session--and this will apply again in the fall as well--we took the guidelines, schedule 8 of your original report, which outlines the television coverage guidelines that the committee formulated and were subsequently adopted by the House, and we also tried to build on the experience we gained during the trial period back in November and December of last year. What we have tried to do in the operating procedures we have distributed to you is to build on your guidelines and try to back them up with some more specific detail of how individual events in the House will be covered.

We have made every attempt to comply with them in every regard, but also taking into account the committee's general view that the proceedings should be as understandable as possible to the viewing public without comprising the fact that they are the verbatim transcript of the House and therefore not meant to be anything more than that.

I will let Mike Applin take you through the report item by item. He can highlight this. The only quandary we found ourselves in was in dealing with your original guideline 4. We have attempted to build on it as best we can. Any input the committee has would be very valuable.

We have been operating with these procedures since the House opened. Bill can respond to any comments or questions anyone has about the operations up to now. It might make sense if Mike could just take us through this report.

Mr. Applin: We begin the report by itemizing four principles which have underpinned what we have placed here as proposed procedures. The first three are fairly straightforward and I will not bore you with them.

The point I would like to raise is the last one, the point that says, "The recognized member will always be shown on camera when speaking." This is an attempt to interpret the television guidelines laid out in your report of September 4, particularly guideline 4. I will just read guideline 4.

It states: "Only the member who is on his or her feet and has been recognized by the Speaker shall be recorded by the audio-visual cameras." We looked at that and decided we could interpret it two ways. One is fairly restrictive and one is a little more expansive.

We can interpret it to mean that only the recognized member on his or her feet will be recorded, which is somewhat restrictive and does not allow us to show much else, or we can interpret it that the recognized member will always be shown on camera when the recognized member is speaking. This is a little more liberal interpretation and allows for coverage of other activities in the House when the recognized member is not speaking, for whatever reason. We have taken that more expansive interpretation and used it in the procedures we have developed. We still think it complies with the intent of guideline 4. We would like your direction on that if you feel otherwise.

Mr. Chairman: That was the original intention of the committee.

Mr. Mancini: You are already headed for trouble with the expansive interpretation. We talked about this a great deal when we were drawing up the guidelines and during our committee deliberation. I will give you a personal example.

Last week, when I had a question for the Minister of the Environment regarding the incinerator they wished to build in Detroit, I had a supplementary question to an original question put forward by one of the members of the opposition. During the placing of the question, there was a lot of frivolity taking place in the House, which is part of the political process in the Legislature. After having placed the question and during the initial reply of the minister, there was what my friend the former Speaker would call a demonstration in the House, mainly a large number of Conservative members rising, applauding and doing whatever they felt they should do at the time. Instead of the camera switching off from myself, who had placed the question and to the Minister of the Environment, who was then answering the question, focused in on what we would call the demonstration.

That not only caused the answer to be somewhat cut--I do not know how I should say this--and the situation did not quite fit the answer because the action had been taken away from the minister and on to this demonstration. I was quite peeved about this. The guidelines we had put before you stated very clearly that the cameras were not to participate in these demonstrations. That is exactly what happened. I want to mention that to the director. I felt very annoyed about that.

As I said earlier on during our debates, your expansion of the interpretation of these rules is going eventually to cause problems, as has already happened in the first week. I want to see if you have any reply to that. I just could not believe it happened.

Mr. Chairman: Any other comments from members?

Mr. Warner: I have watched the television off and on in the lounge. I have not seen it at home on the late night show. My experience is kind of minimal on this. I did not see what Remo is talking about, I missed that, although I was there in the House when it unfolded. What I have seen on TV so far, I like very much because there is a certain animation about it that makes it good TV. If members could improve their speeches, it would be even better TV. It is good coverage.

It is a two-edged thing that Remo is talking about. On the one hand, we want the public to know what is unfolding. My mind goes back to what we saw in Ottawa that we did not like. That was where the Speaker was calling order and nobody had a clue why and nobody knew what was going on or for what reason he was calling order. On the other hand, we are showing something which is so disruptive as to take away from the basic item, which in this case was one member asking a question of the minister and the minister's response. That is supposed to be the primary focus.

If that is all you ever do, then it will become very stultified and we will lose some of the flavour around us. I am not sure where the balance is, to be honest with you. I understand Remo's point, and if it happened to me, I probably would be upset too. On the other hand, if you never showed any reaction from the other benches, we might be concerned about not accurately portraying what is unfolding in the chamber.

Mr. Chairman: Maybe I could report that I made it a point to watch the proceedings myself and talk to other members about it. I have not heard any other complaints about it. I happened to see this particular one on video. It is a quandary. There are no good choices available here. If one totally ignored an intervening event--whatever it might be--this kind of demonstration



or something like that, what you would be forced to portray would be the minister answering a question with obviously something happening but you would not be allowed to show it.

4:10 p.m.

The comments I have received are basically that we have one area where we do not have a good solution. On several occasions now during the course of televising the proceedings, things happen in such a way that they do not quite fit a mould. It is easy to say whoever is recognized by the Speaker is on camera. You have identified occasions in your report when that happens very quickly, or events change around a little bit or it does not quite fit as nicely. When members read their private bills into the record, there is a lot of hubbub and confusion on the floor of the Legislature. We have not found a good way to show that. The broad shot, which is now being used, unless you know what to look for means nothing to you. It looks like the cameras all went out or something and you are on some kind of fall-back thing.

In this instance, as I watched it, I do not know what you could have done that would have portrayed it more accurately. You could have embarrassed the minister by making him the person on camera while this occurred. You could have embarrassed Mr. Mancini by letting the camera stay on him while this occurred. You could have embarrassed the Speaker by putting the Speaker on camera while this occurred. I do not know that we have found a good solution to this yet.

We are still at the point where we were originally, where we would say the primary person on the camera should be the member who is recognized, whether that is the minister answering the question or the member asking it. I do think we have to find a way--and we have not found it yet--of portraying what is actually happening. For example, in that instance, if we had put the minister on the screen and the minister had to stand there while this disruption occurred, how would the people at home ever figure out why a minister was so stupid as to just stand there and look across the House. I do not know what that is.

Mr. Bossy: To follow up what Remo said, this is one of those occasions whereby the demonstration was not really related to the question. It was a reaction from the opposition because Remo asked the question of his own minister. This is a different situation. I have asked a question. I did this on my own and the minister was unaware. At the same time, the reaction is different for the government itself.

Mr. Mancini: Much different.

Mr. Bossy: If it was opposition reaction to Remo, this would be different; the next shot would be on the opposition. In this case, the shot was still staying on the same side. For some reason or another, that type of situation is highly political.

Mr. Chairman: Maybe we could ask Bill whether there are other options here. The only thing I thought might have worked would have been to go back to the broad shot of the Legislature where you do not identify what the demonstration is but you do acknowledge that there has been some kind of disruption and you do not embarrass the minister by making him stand there on camera while this thing occurs. What other options are there?

Mr. Somerville: There is the option to come to the wide shot from the centre camera, and then that tends to cool all the action because it is so distant that you cannot really see what is going on on the floor. This problem does happen when a member of his own party asks the minister a question because you are tying up both cameras on the same side of the House. It depends on what the camera that was not being used was doing. Maybe the cameraman was not ready for the minister; maybe I did not have a picture of the minister at the time, so I had to take--

Mr. Mancini: You should review the tape. It was very clear what your cameraman was doing. The only other comment I want to make is if that is the case, if you want to zero in on these demonstrations--

### Interjection

Mr. Mancini: Let me finish. As my colleague the chairman has said, if you want to give the people at home an idea why all these people are shouting and what the person on the camera is doing there trying to talk over all these shouts, what the camera man should have done was to zero in on the opposition party when I was facing the camera and could hardly have been heard by anyone because of the demonstration.

What you chose to do was to ignore the position I was in when I was putting my question when the demonstration was just as loud and you chose to show the demonstration at the end of my question as the minister was starting to respond. That is exactly what happened. You had two opportunities to show the demonstration; you chose the one that put the questioner and the answerer in the worst position.

Mr. Mitchinson: I can elaborate on that a little bit. I think the reason the shot was taken at that time and not earlier is there is a provision in your guidelines that do provide for applause shots. What happened was there was applause, so there was a cut away to the applause. It was not the fact that there was a reaction going on; it was the fact that there was applause.

Mr. Chairman: Is there a solution here among the three things?

Mr. Mancini: I was not quite finished, Mr. Chairman. I just want to remind the people who are trying to undertake this difficult job, when they refer themselves to television guidelines under schedule A, they will clearly see that this committee over its deliberations has clearly stated that it is not your responsibility. It said, "The television coverage of the proceedings of the Legislative Assembly should be an accurate, factual and coherent record of the legislative procedures, which is understandable to the viewing public and which does not dramatize or editorialize such proceedings." That is exactly what you did.

Mr. Somerville: That is understood by me and everyone, sir. It is unfortunate that I cannot remember that occasion, but since then we have been keeping to the speaker. If I had taken ideally the shot with you asking the question, with the interruption, the way we are trying to do it now is you would be in the foreground of the shot. The camera would be taking from behind you, showing you on your feet and the opposition.

Mr. Bossy: That would have been the alternative shot I was going to suggest.

Mr. Somerville: That idea is what I would like to have come to.



Mr. Breaugh: Can I just raise another matter which is very much related to this? This is a better approach that has been suggested now, that would portray what is actually happening, which has been the difficulty. Maybe it is just in the early going and we are all a little unfamiliar with it. I have noticed on several occasions now when you did a very stultified portrayal of the proceedings, that is, you locked the camera on a member asking a question, while in the background there was something which took away from it all--a member asking a question, the person sitting behind him tugging on his ear, scratching his nose, doing something like that.

In that case, you have followed an exact guideline. In the visual portrayal, the most common one is a minister up answering a question and since members are not yet accustomed to the fact that there are television cameras in there, the person behind the minister is falling asleep, looking very bored. However brilliant the answer might be, the portrayal on television is the minister is so boring his own friends are falling asleep while this goes on. Is there anything we can do that would alleviate that somewhat, or do we just to wait until members figure out that the television cameras are on?

Mr. Somerville: If some members are towards the centre of the House, ideally, you can get a similar shot from the two cameras, either the south or the north camera. I try to take the one with the least objectionable background.

Mr. Chairman: I watched one today, for example, where--

Mr. Somerville: There was a perfect one today.

Mr. Chairman: --behind a minister of the crown there was a member on his side who appeared to be stabbing himself in the nose with his finger, and it appeared to be causing him great pain. I must admit I could not concentrate on the answer very long because there was someone in agony behind him. That is probably a situation where we will just have to be aware that the television cameras are on, but I would think the thing you could that would loosen it up a little bit would be another camera shot at a different angle.

Mr. Somerville: The other camera shot would probably eliminate one of the members, either the one who is on the left or right shoulder. That is the answer.

Mr. Mitchinson: I think you will find if you watch the House of Commons proceedings, it does not happen as much now. They are very much more aware of it. When you see a minister delivering an answer in the House, the people all around him are very attentive. There is a certain amount that we can do and a certain amount that will come with time and with more attention focused on the fact that television is there.

Mr. Bossy: You can eliminate the people in the background pretty easily.

Mr. Mitchinson: They cannot come in on the entire--

Mr. Chairman: What I am concerned about here is that of the options that have occurred to me, one the things we have tried to stay away from, is really tight closeups, which would be a way to eliminate background. The difficulty with that is that very few of us are beautiful enough in the natural state to withstand a tight television closeup. Professionals in the

field go into makeup for 20 minutes before they subject themselves to it. I do not think we are about to do that; so the tight closeup is not really a great option.

Mr. Mitchinson: It would stand out as an unusual shot as well, an atypical shot. You would wonder why a person is being shot so closely.

4:20 p.m.

Mr. Chairman: One of the things which a couple of people have mentioned to me is, while we are all very nervous now, we should not pound our desks. This is a no-no. We have not quite learned how to applaud yet. Sometimes there is a scattering of applause and sometimes there is the very quiet sound of one member clapping. Does that create problems for you?

Mr. Somerville: No. It is a lot better than the November test. There is quite a nice balance at the moment. It is good if you thump desks away from the microphone. If you are on the adjacent desks, it comes through like a pounding hammer.

Mr. Chairman: I have heard a couple of comments about the sound system not being the world's greatest, particularly on the day when it died completely.

Mr. Somerville: We improved it today. It was much better today.

Mr. Chairman: In my viewing of it, the sound system has not been great. It is audible. You can hear what is being said. There seemed to be some microphones which are occupied by small gremlins.

Mr. Mitchinson: The only negative comments I have received from the public at all have all related to the audio system.

Mr. Chairman: Maybe we are justifying why we are spending the money on putting in a new audio system.

Mr. Bossy: I am very nervous with the split-screen as to the decisions being made on when you are using it and who is going to be on split-screen. We talk about paying attention when you know the minister is going to answer or whoever is asking the question, but when split-screen takes place, we do not know when that happens. When you are sitting in the House, you do not know. I think that will become an embarrassing thing. I go back to when we discussed this, I know myself and Remo were not in favour of split-screening. I still feel strongly that split-screening will give us the worst problem down the line of people complaining. Who decides on which shot should be split-screening? That is a big decision. It is a political decision you are making.

Mr. Somerville: It is a difficult decision, but under Tom's direction we decided not to put any in until after these meetings.

Mr. Chairman: It is difficult to generalize because actually not a whole lot of people have come to me about this. We have not used split-screening yet. I have had no complaints about that. I have had a couple of complaints that when they move to the wide shot, people lose a sense of what is happening there. It almost appears as if the system has broken down for a while. That has not come together.



Mr. Mitchinson: To the very broad shot.

Mr. Chairman: We have not sorted out the very broad shot. For example, you cannot recognize the Speaker, who is often the person on his feet when this shot is being taken, unless you look to the dias and there is the Speaker who will be standing. I know that because I have been a member here for a while. Others in my family who do not are not aware of who is talking or what is going on. We have not quite resolved that yet.

Mr. Mitchinson: It looks like a default in the camera.

Mr. Chairman: Yes. It looks like our cameras went down and we went back to some backup system.

Mr. Bossy: Can this not be resolved by the original camera that is on the Speaker and then have that camera itself opened up? Then we do not lose the person who has been featured first, and then open up. To open up and then come back in is the difficulty.

Mr. Mitchinson: The problem is where are you with that camera when it happens? If you are focused in close on the Speaker, then you can do that. If you are focused in back on the Speaker, it takes too long to get focused in, in order to draw back.

Mr. Chairman: By the time you are focused, another member is on his feet. Part of this problem may be we are trying to be premature about this. Maybe we should allow the cameraman to be there for a while and get a sense of the place and understand who is likely to be on his feet at a given moment and then these problems will resolve themselves.

Mr. Mitchinson: We appreciate your patience.

Mr. Bossy: I have been watching the cameraman very closely and I commented on this to my seatmate, the new member, Chris Hart. That happened to me yesterday. They did not know who the question was being directed to. I knew it was the Solicitor General, but he was scrambling with his sheet of names and there was not a camera on Ken Keyes at all. He was ready to get up.

Mr. Chairman: We have not had major complaints about anything yet. I have had queries about what is going on here. What I am judging it by is I most often watch question period at home, and other members of my family who have not sat here for 10 years do not know what to look for. The television that is portrayed there is not giving them even hints as to what is going on. We have to work out ways of doing that.

The other thing I noticed in your report to the committee today is on the naming of a member. That has not happened yet, but we also had the problem and your comments here are not going to resolve it.

If you do show the Sergeant at Arms doing his duty, we will see the member who has been named being escorted from the premises. I think we will have to do something a bit more than that, identify the member with his name or whatever underneath or something. It does not get the Speaker off the hook. Again, we are putting the Speaker in a very bad position during the process where the Speaker might be calling for order for several seconds. That can be a long time on television, where there is no indication of who the member is until the Sergeant at Arms arrives at that desk. People may not be aware of

who the member for Oshawa is, which is how I would be named, and they might think he is escorting Ms. Grier from Lakeshore out of there or somebody else who sits around me. I agree that is a better way than Ottawa does it, but I think we have a little bit of work to do on that yet.

Maybe we should try this for now and see if somebody can come up with an ingenious way of making it more comprehensive and more comprehensible to people who are watching.

Mr. Mitchinson: On the graphic side, I think we can put a character-generated scroll up whenever anyone is on the camera. That is the theory we have been following. I think that would cover off that. If the member was being escorted from the House by the Sergeant at Arms, we could put the graphic for that member on the screen at that time.

Where I think the director is put in a very difficult position, and we would want some very clear direction from someone on it, would be during the time prior to his being ejected. Can the camera go, while the Speaker is saying, "The member for Osnawa, the member for Osnawa"? If we are going to be told to shoot the member for Osnawa, I think we have to be very clear that we are entitled to do that. I think that is an example of something where the television system can affect how members behave in the House. I do not think Bill or any other director should be put in the position of making those judgement calls on it. If it involves the officers of the House, I think we can deal with it.

Mr. Chairman: I would tend to think that what we will be forced to do here is to try two or three versions of it. We will have to be able to see the videotape before we can tell you whether you have accurately portrayed it. I do not think we are saying you are going beyond the bounds.

Some of the salvation here may be a better use of the wide shot as an indicator that the Speaker is on his feet. There is something happening in the House. You should be aware of that. There would be some variations on the wide shot.

The problem we are putting to you is that we do not want to encourage members to misbehave, that they get on camera by acting improperly. However, we are concerned that the Speaker not be put in a bad light either. If, of two, you are going to be snowing someone in a bad light, I think my preference would be to snow a member in a bad light rather than embarrass the Speaker, who is simply trying to do his job. That is our problem.

We will probably have to see a couple of versions of how you might provide coverage of that before we can say, "This is the good one; this is the wrong one." I suspect we are going to have to do this kind of thing two or three times during the course of the spring session before we get it the way we want it.

Mr. Mitchinson: If I could just comment on that, we would like to offer it under that method as long as it is clear to everyone that we are experimenting with the different ways. We do not want to be put in a position where somebody is going to haul out the television guidelines and say, "Where does it say here you can snow the member who is being named by the House?" As long as we have that understanding from the committee, we can go some way towards trying to snow you some alternative methods of handling it.

4:30 p.m.



Mr. Bossy: I would like to suggest that during our trial and error period initially the director identify the grey areas of the guidelines that he faces that we are not even discussing right now, where he may during the course of events all at once come to a point of saying, "Wow, what do we do here?" You can identify that and also have the decision you made based on that occurrence, "This is what I did but was not comfortable in doing." Then bring this back to the committee so we can see it on video. We cannot edit it, but you could identify areas of decision you are making that could fall within the grey area that you are not comfortable with.

Mr. Chairman: In general, that is what we tried to do when we wrote the general guidelines. We did not want to write them very tight because we do not know, for example, how to cover the ejection of a member, how to cover something out of the ordinary which happens on the floor of the Legislature. This is the only route we can go. We will have to go through a period where you tell us from a television coverage point of view what is the most accurate way to portray what is happening in the House and we will tell you when we think that may be the most accurate way to portray it, but it is not an accurate statement of the Legislature or we are encouraging bad behaviour on the part of the members or something such as that. All members in this committee can communicate to you problems that happen to them personally or to other members in the caucus because they are talking to us about it.

Mr. Somerville: There is a television grammar that as a director you have to go through, such as, "close up, wide shot, the location." You cannot cross an axis down the floor between the Speaker. When you are directing the program and all these things are happening around you, you have to keep that in mind, like the grammar. I cannot quickly switch to a camera on the other side even if it is a better angle of the member because it will disorient the viewer. This is part of the problem to give a good portrayal of the House. You have to stick to the grammar. That will help get the guidelines in the communication.

Mr. Bossy: An action shot is very difficult to determine. I want to come back to what happened to Remo. With respect to what Remo happened to be saying or questioning, the demonstration did not relate to the question or any subject material there. People out there would not understand it. It is only people in that House that might understand it.

Mr. Somerville: This may be the place where I did get into the grammar. When a member of the same party asks a question of the minister, I could have had the cameras in the wrong place. I cannot suddenly say to the camera, "Pan over," or else you will see the camera whipping like a mistake such as happened today in today's question period with one camera. I would probably cut to the other camera to get over the axis and then back on the minister answering. Was the minister on the same part of the bench as Remo? Which minister was it?

Mr. Warner: The opposite end of the House.

Mr. Somerville: I may be taking Remo on the camera that should have been on that minister.

Mr. Bossy: It is worth looking at.

Mr. Somerville: I will definitely look at it.

Mr. Applin: Given that we have talked around these guidelines fairly expansively and very helpfully and given the fact that you have correctly identified the need to refine them as we go and as we learn, I wonder if there is much point in going this through page by page.

Mr. Chairman: I do not think there is.

Mr. Applin: I wonder if it would be useful to leave it as it lies and come back at it again at some future date as we know more about it.

Mr. Chairman: What I would suggest to you is it seems to me it would be a useful exercise--I do not know whether it has to be once a month or not but roughly every four or five weeks--to have a little session back and forth where we identify problems that members have encountered here and you identify some problems for us. If I could leave you with a couple of observations that were put to me by other members, there is a physical problem with the movement of the pages through the desks, particularly during question period where a member is standing asking a question and a page is trying to deliver a note. Is that posing a problem for you as well? Our members are not looking at their desks when somebody is trying to move a chair around behind them. Maybe that is a matter where we would ask the Sergeant at Arms to keep the pages out of the benches when a question is being asked.

Mr. Newman: Which are your people?

Mr. Chairman: Four are located actually on the floor and one camera is at the top right in the middle.

Mr. Newman: I think they should be identified--

Mr. Chairman: They do have a little yellow identification badge.

Mr. Newman: A little yellow does not mean anything. How am I going to see a little yellow across the corridor in the House.

Mr. Bossy: The only ones that are on the floor--

Mr. Newman: You put that on yourself and stand at the door, and it is hard to see.

Mr. Somerville: We are always in the House.

Mr. Newman: I have never seen that on anyone yet.

Mr. Chairman: Any other things?

Mr. Warner: Two things, I like Mr. Bossy's suggestion of us taking a look at something. When you come back another time, perhaps you can give us a tape or two of stuff that you have tried and we will take a look at it. I put this in the perspective of a couple of things. First, the members have a responsibility in the House with or without television. The way in which they conduct themselves in the House is their own business, but they should know what the consequences are. If members want to fall asleep or look strange or say weird things, now it is available to the whole province and it is their problem. I do not have a lot of sympathy with members who are concerned about the TV coverage. To a large extent, that is of their own doing.



Members tend to be a bit paranoid about the kind of coverage and how they look. I would be really surprised if TV coverage were to cause the demise of someone's political life by simply being there and functioning in the House, that if you do not get complimentary angles or are seen on television nodding off or writing notes or reading the paper that you are not going to be elected.

Mr. Chairman: Richard Nixon would disagree with that.

Mr. Warner: I think that had something more to do with tapes than anything else. I put that in that kind of perspective. I encourage the experimentation. We can take a look at it. I think that is really important. We want, among other things, to create not only an accurate portrayal to the public but an interesting one that they will enjoy watching. The experimentation has to go on and the members have to appreciate that, live with it and mind their own selves as to how they conduct themselves in the House.

Mr. Mitchinson: Just on that point, we found out today and we are quite pleased to know that the Rogers coverage is now available in the Legislative Building on any television set. We ran into the situation where the grade of Rogers Cable in the building was not strong enough to pick up channel 39. They have reworked it so that now, just within the complex here, channel 39 is being covered on channel 10, so you will be able to get it on Rogers. Thereby, more members will have a chance and more staff people will have a chance to look at the proceedings and deal with some of the behavioural issues, if you will.

The only other matter I would like to raise, so that the committee formally understands the importance of it, is that in the planning stages for this project, the matter of simultaneous translation remains unresolved. It becomes an issue that affects the construction and planning of the project implementation. The members' services committee have the jurisdiction to deal with that.

If this committee is going to be the one that continues that discussion, I encourage you to slot us that bit of time early on here so that we can present you a report, so that one decision can be made one way or the other. If the decision is to go with it in October, we will be able to do it for you.

Mr. Chairman: Okay. This committee initially in its deliberation said that it wanted simultaneous translation. The mechanics of that is in the process of being worked out. I would take it--and we have it on our agenda to go over it again--that the committee is still of the mind that we want simultaneous translation made available. Are there technical details that have to be worked out now?

4:40 p.m.

Mr. Mitchinson: Yes. The members' services committee spent several days working on just the logistics of how to implement it. We appeared before that committee with the architects and with representatives of the simultaneous translation community. We have finalized a report that deals with the location of the booth, with some of the employment-related things to do with translators, which we have finalized and are ready to deliver to this committee.

Mr. Chairman: Let me give it to you in two stages then. In principle, we have advocated simultaneous translation. In terms of the mechanics of it, if you have a final report, if you would give us a copy of that, we will slot some time and deal with that part of it as soon as we can.

Mr. Mitchinson: Very good. Thank you very much.

Mr. Chairman: Before you go, may I raise three or four other matters that people have raised with me. One is that there is a problem which may now be resolved by the fact that Rogers Cable has moved it around to cable 10. In the members' lobbies, particularly on the opposition side, all the staff people are now fascinated and want to watch it outside where they can drink coffee. If it is available in their offices or elsewhere in the building, that would alleviate the problem. I have asked people to look this up. There was an original recommendation, and I believe a budgetary item, to provide the cable feed and a monitor in each office. Where is that at?

Mr. Mitchinson: When we found out that Rogers was not available, we proceeded to cable in to each caucus, to wire in to each caucus. That has been finalized in two out of three caucuses. For the other caucus, I think, which is the New Democratic Party caucus, we will see if we can resolve it through the Rogers route rather than the direct feed because that would solve it better.

Mr. Chairman: It would be appreciated if you would expedite that because we are having some difficulty with that. The second thing is that although the distribution is out there and we are aware that most of the communities in Ontario that have a cable system are now running it, no one has been told about it. Can we do something to inform the public? Can we get the cable companies to run promotions or something like that or provide them with a promo?

Mr. Applin: When we first talked about this, there was some suggestion that perhaps members could encourage their cable companies to carry it and publicize it. In the early stages of getting it up and running, cable companies have not been sure, up until just recently, whether they could carry it and on what channel they would carry it.

Mr. Chairman: Yes, there are still some technical problems.

Mr. Applin: There are still some technical problems.

Mr. Mitchinson: In many cable companies, they are still unresolved.

Mr. Applin: It requires several pieces of equipment to carry the cable, to pick up the satellite distribution and carry it. Not all cable companies are able to put the piece of equipment in place. In some instances, the equipment is not available because there has been a run on it.

Mr. Chairman: Yes.

Mr. Applin: We have some problems also because we are using what is known as the occasional use transponder and booking it for certain blocks of time. Other people book it for other blocks of time. Some cable companies have what they call remote head ends, where they do not have someone to switch the thing off and on. We are trying to resolve that problem by some form of remote switching device which will ensure that Rogers Cable does not carry a video conference that happens to be on after we are on, which would be a bit of a problem if it happens.



There are several technical problems we are overcoming. The community out there looking at us is increasing day by day as more and more companies are coming on stream. We are keeping Tom up to date on who is available. It is about at the stage now where we can perhaps do something by way of advertising it more broadly. Rogers, on channel 39, has a cue card that says "legislative television service," but nothing much else has happened by way of advertising. We should look into that.

Mr. Chairman: Perhaps this might be appropriately put together in a report form two or three weeks from now. May I ask you to be mindful that we would like to make people aware that the broadcast is available locally. We would like to see some kind of promotion, I suppose, by the cable companies or make a promotional video available to them. I am sure lots of members here would be prepared to help people put one together. That might be a useful project to consider.

Related to that, a number of constituents have asked me to explain what is going on here since they are not familiar with parliamentary procedure or how the House works. It may be useful at some time to put together a 30-minute cassette or something which takes people through the process. I forget the man's name, but the federal House has someone who introduces the proceedings and says, "Now we are going to go to question period," or, "There is a vote being called now," or, "A bill is before the House." Can we also give some consideration to how we would go about doing that? I think that also has to be addressed.

Mr. Applin: That has been in our plans for the permanent facility when it comes on in the fall. It is our intention to develop a program schedule which includes some explanation of the day's events and maybe even some training for viewers on what goes on in a general sense. Timing has not allowed us to do that for the spring session, as you are aware.

Mr. Chairman: As a final point, I have had a request from a number of people now. Each of the caucuses is now getting to the point where they are aware that the television coverage is going out and they might just as well get used to it. They are looking for devices to assist the caucuses to assess what it looks like, how members should behave, what are the ramifications of all that. Is it possible to put together a little package, for example, for each caucus, maybe a weekly update of what each caucus looks like or something like that? It is basically an editing thing I am looking for.

Mr. Applin: You are looking for some advice on how to appear before the cameras, what to do and what not to do.

Mr. Chairman: I would be happy to hear your advice on it, but I think more to the point right now is that we physically are in a position where we have the equipment to put together these packages ourselves. All of the caucuses do now. However, we do not have anybody to run the machinery or who knows how to run the machinery yet. It would help a little bit if you would pop into each of the caucuses and say, "Here is 10 minutes of your caucus this week," or one package that says, "This is a sample," the kind of thing you did for us in the fall. I do not know how much staff we have here to work with and I do not want to give you an onerous job.

Mr. Hutchinson: That is the issue.

Mr. Chairman: If some rough cuts could be put together and handed over to the caucuses on whatever kind of basis, it would help us get ready for it.

Mr. Applin: I think it is probably a little easier to do that in question period, using that as a prime example of the dos and don'ts of performance in the House.

Mr. Mitchinson: When one consultant who is in the business of educating people on decorum and behaviour before television cameras contacted me, I referred him to the communications people in each of the three caucuses to see if there was any interest in that.

Mr. Chairman: The problem, as it has been explained to me, is that, for example, in my own caucus, we have the equipment to do editing, the monitors, the feeds going out and all that. However, we have not been able to hire anybody yet to do that. Other caucuses are at different states of preparation. It would be helpful if some kind of a package, as you did in the fall, could be put together, whether it is one package for everybody, one for each caucus or whatever. If it is possible to do that, that would expedite it. I am aware that each caucus is now aware of the televised proceedings and is trying to take some steps to survive while this process goes on.

Mr. Mitchinson: We will certainly take your comments in. I agree with you. I think it is a very excellent idea. It is just a question of whether we have the manpower to dedicate to it on a weekly basis. We can certainly do it for the committee. We can probably do one package every so often. The finer you break it down into only one caucus--

Mr. Chairman: I believe all the caucuses used the tape that was prepared at the end of the fall testing session. Basically, what I am asking for is that would be useful if we could have it, not on a weekly basis, but every couple of weeks or something like that.

It would also assist the committee in going through these guidelines. We will have to go back to our respective caucuses and ask them: "Are you objecting to the reaction shots? Do you think the really tight shot that is used in Ottawa would be more appropriate? Do you want less of that or more of it? How do we cover the ejection of a member? How do we cover the awkward period just after question period ends?" We need to be able to show them in order to consult with them.

Is there anything else from anybody? Thank you, gentlemen. We enjoyed it and we will see you later.

For members of the committee, we have a couple of other items, but I believe we will set those over. As soon as I have clarified for me when we have permission from the House to sit, we will do that. I am anticipating we would not start on more public hearings on freedom of information until at least next Wednesday afternoon.

Mr. Warner: Run that one by me again.

Mr. Chairman: We will not have public hearings on Bill 34 until at least next Wednesday afternoon.

Mr. Warner: And our budget? Do we need to set a budget?

Mr. Chairman: Yes, but we cannot do that now. We will have to do that in the next session.



Mr. Warner: No, I did not mean now. Are we going to do that next week?

Mr. Chairman: Yes.

The committee adjourned at 4:49 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY  
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT  
WEDNESDAY, MAY 7, 1986





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Jonsson, J. M. (Wellington-Dufferin-Peel PC)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Also taking part:

Gigantes, E. (Ottawa Centre NDP)

Clerk: Forsyth, S.

Clerk pro tem: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Aregers, G.

From the Ontario Coalition for Nursing Home Reform:

Steffler, V., President

Wahl, J. A., Counsel

From the Associated Credit Bureaus of Ontario:

Ferguson, H., President

Chercover, J. L., Counsel; with Kronby, Chercover

Individual Presentation:

Howes, T.

From the Management Board of Cabinet:

White, F., Co-ordinator, Freedom of Information Project, Management Policy Division

From the Ministry of the Attorney General:

McCann, S. B., Counsel, Policy Development Division

Ewart, J. D., Director, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, May 7, 1986

The committee met at 3:46 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: We have a quorum. We will proceed. This afternoon we have four sets of witnesses on this bill. The first witness is George Aregers. George, would you come up and sit there just in front of one of the microphones at the end table. The process here is that normally we provide an occasion when you can say whatever you want to say to the committee and then there is a brief opportunity for members of the committee to ask any question that might spring to mind. Just proceed.

GEORGE AREGERS

Mr. Aregers: I have submitted a presentation.

Mr. Chairman: The members have that.

Mr. Aregers: Do they all have a copy of it?

Mr. Chairman: Yes. It is on the desk in front of them.

Mr. Aregers: It is self-explanatory. There are certain things that you people can read, but what bothers me the most about the problems with this act is the regulation that says, "any agency, board, commission, corporation or other body designated as an institution in the regulations is covered." The Lieutenant Governor gives this list out, and it appears there are a lot of important agencies and commissions that are not on that list.

I have had problems with two of them since 1981. One of them is a conservation authority. I went to the city court, to Mr. Lotto, and I asked him, "Who is responsible for the conservation authorities if there is a problem?" He said it is the province.

I have a letter here, dated February 25, 1986, from Mr. Lotto, asking the conservation authority for their executive agenda minutes; and he still has not received anything. These minutes include where they are giving permits, to whom they do not and their reasons. A few years ago they used to be available, now all of a sudden they are not. I am a person who has a home, and I want to find out why is it that I cannot receive a permit to safeguard my home. They are using the lame excuse that I would affect flooding and I would affect conservation, but take a look on the lake and see all the dumping that is going on.

These are the things about which I have gone to these people and I have begged them. My lawyers have called them. My MP has called them. All of these people advised me to go to the Ombudsman. The Office of the Ombudsman says, "This is not a provincial agency."



In the documents I do have, the solicitors for the conservation authorities call them local boards. The conservation authority here in Metro stretches from Ontario almost to North Bay. The scary part in this act is this 20-year ban. Why is it 20 years? If there is an executive and it is open to the public, I think anything that happens in that meeting should be available to the public. Those executives who go over it are policemen, jury and everything at the same time.

The other problem we have here is with another department. If a person does not get a permit through this conservation authority there is an appeal process. My feeling is that initially the Conservation Authorities Act was brought in to protect people from flooding. It has got to the point where its sole purpose is to get park land and cheap.

The appeal process is to the Mining and Lands Commissioner who is a single person. I have included a copy of the Demeter case. I knew about this case because it was mentioned in my appeal. If I want any cases from the Mining and Lands Commissioner, I am not able to see them unless I know the person who put in the appeal and the conservation authority. That is the only reason I knew about this case. I was not allowed to see a list. I was not allowed to know how many appeals were dismissed. It turns out that almost 99.9 per cent are rejected.

However, the problems I had with the Mining and Lands Commissioner was that when I called his office, I was assured I could have a copy because I knew the individual who had put in the appeal. I was told it cost 75 cents. I came there with cash and I was really hoofed out of the office. I was told I had to pay by a certified cheque. I said, "Can I read the appeal?" They said, "No, you cannot; you have to buy it, and it has to be a certified cheque."

This was some time ago. I have asked to go to the Mining and Lands Commissioner's office to sit in on a couple of these cases. Now I am told I do not have a right to know when they are. I am allowed to sit in if I just come in and they are sitting, but I do not have the right to know who is going to be on next week or the week after or in a month.

The Mining and Lands Commissioner used to make lengthy reports on his appeals, but all of a sudden since this act we find they are now one page and they are not available to the public.

The other scary part, if you read this seven-page or nine-page appeal, is this person from Hamilton owned a little cottage, and tried to build something on it. It had been in the family for a long time. The conservation authority went out, and this is another thing I should bring to your attention, and said, "Hey, all over the place you are going to have 21 feet of flooding." When I go to the conservation authority, as this lady did, and question how they arrived at this, they will not tell. The answer you get is that it is so sophisticated, you need a monstrous computer. This lady has gone to the Mining and Lands Commissioner and she disagreed with the Mining and Lands Commissioner about this nine feet of flooding on her land. He fined her \$1,000.

Getting back now to this act that we have, if, for instance, this appointed commissioner does not like a person, is he going to fine this person \$1,000? This person is not the only one he has fined. He has also stated legal costs for the conservation authority and fined these people.

I really would like to see a little more coverage in this act, so the

public could really look into certain departments as the conservation authority and the Mining and Lands Commissioner's office.

There is something here, which is a legal letter that was sent by a member of the executive to the conservation authority. They have been trying very hard to get the province not to appoint the chairman and two other members. They want them out. Also in the same vein, and this goes back to 1982, is what is found on page 4. This is our solicitors, who wrote to them and said, "Better be careful." Sorry about that, it is page 3:

"Pursuant to sub-section 27(2)(b) of the Conservation Authorities Act, the executive committee, or the authority itself, must hold hearings to determine whether to grant or refuse permission to applicants for matters falling under sub-sections 27(1)(b), (e) or (f). Under the existing practice the executive creates and enforces its regulations and then it is expected to adjudicate upon them. It is a lawmaker, policeman and (impartial) judge all at once! This does not have the appearance of fairness, at the very least. It is my understanding some executive members are dissatisfied with this arrangement, but no solution has yet been found."

Nothing has happened. They are still doing the same thing. There used to be executive minutes available at the library. That has stopped. I remember when the general manager, back in 1983 or 1984--I think his name was Jones--was asked to resign. There was a lawsuit. The conservation authority had to pay him \$80,000 plus his legal costs. We, as residents, do not know why. But after his resignation, the only thing that they were very explicit about and that they gave documents on is the land deals he did, so we suspect there is some problem that he had with land deals.

When the residents in my area have problems with the conservation authority, we want to know how is it that certain people get permits and others are refused. I think this act we have here now is a very good act, but I think it needs a little bit of tuning. It is important that you people recommend, or my recommendation is that the Lieutenant Governor who has the authority lists the Mining and Lands Commissioner and lists all conservation authorities. There was an extensive inquiry into the conduct of the conservation authorities in Ontario and still that has helped none of us. I hope this act, if it is introduced with some of these changes that I recommend to you people, will help us. Thank you very much.

Mr. Chairman: Any questions? Mr. Treleaven?

Mr. Treleaven: Sir, I just want to point out that on a previous day, with previous people, several members did state that they were going to vote for bringing in all agencies, boards and commissions of the government according to a certain definition. It would basically be all of them instead of a specified list. Some of us are determined to see that brought in. Let us hope it is the majority on the committee that will bring up all of them.

Mr. Chairman: Okay, thank you very much. The next delegation is from the Ontario Coalition for Nursing Home Reform. This is exhibit number 67 in the book. Verna Steffler is the chairperson, Harry Beatty is the secretary and Judith Wahl is the counsellor. If you could assist us a little bit by identifying who is who for the purposes of Hansard and just proceed to say what you would like to say and we will see if they have any questions.



Mrs. Steffler: I am Verna Steffler, chairman of the Ontario Coalition for Nursing Home Reform. I am going to give you an overview of the purpose of the coalition and Judith Wahl, who is sitting beside me, will give you a summary of what our presentation is all about. Our coalition is made up of approximately 20 groups which are professional associations, church organizations, concerned citizens groups and so on. Our coalition has been around for a little more than two years and we are what we could call the umbrella coalition that draws together all of these groups to present our concerns. From there, I will just ask Judith to go ahead and highlight.

4 p.m.

Ms. Wahl: In general, the coalition is supportive of Bill 34 and the principles behind it. We touch on the three major points that our coalition is particularly concerned about. As a basic principle, we believe that since long-term care facilities receive substantial public funding, and some of these facilities are privately owned and run for profit while others are charitable, non-profit organizations, it is justifiable that they be accountable to the public for the use of those funds as well as for the quality of the service they are providing and also their compliance with regulations and legislation.

From the point of view of the consumers of that service, information is needed by the consumers. The consumers of long-term care facilities are very vulnerable people. At this point, they do not have access to a great deal of information to permit them to make informed choices concerning which institution to which they should be applying. The public needs adequate information to effectively monitor these institutions. This is justifiable because of the vulnerability of these people.

We question whether Bill 34 will apply to long-term care facilities. Does the definition of institution capture nursing homes, homes for the aged, and chronic care hospitals? We understand from our own correspondence with the Attorney General that the bill does not apply to these institutions at this point, but at some point in the future it may apply. We would submit legislation should apply now, not later, because of the vulnerability of the people who are using that service.

Second, we believe there is a need for public access to reports of complaint investigations that are now conducted, particularly in nursing homes by the nursing home inspection branch of the Ministry of Health. It is ironic that there is already some access to some of this complaint investigation because it appears in the annual licensing reports that are posted at the nursing homes. In the course of that annual licensing inspection, if particular problems relating to individuals come to light, they are listed there. The privacy of the individual is maintained by not listing the name and it also sets out what is to be done to comply with the act to rectify the breach.

It is inconsistent not to provide the same information for the complaints investigations. The information about complaints investigations that is needed includes the number of complaints that are filed, the types of complaints, and how those complaints are resolved. I believe this can be done in a fashion that is going to protect the privacy of the individuals involved. Right now, from what we can see in section 14 of the Bill as it is drafted, we question whether there would be public access to these complaints investigations. We realize that in some cases, the reports of the complaints shall only be made available after certain decisions have been made. For

example, if there is a decision for a prosecution to take place. However, eventually the final reports and final results of complaints investigations should be made available.

Last, of particular concern to the coalition is the availability of financial information concerning the institutions and, in particular, the information from the for-profit operators. Information about the nonprofit operators is partially available now because they are charitable organizations, but there is nothing that particularly covers the for-profit operators. Again, we submit, the receipt of the public funds carries the duty to account for those monies and for the use of the funds.

The coalition is supportive of Bill 92 that would require financial statements of licensed nursing homes to be made available to the ministry and for public inspection. We feel that bill does not go far enough and it should be included in this bill. There should be access to the information in this legislation because that bill does not cover disclosure of accounting for expenditures for previous years. It only has a profit and loss statement and a budget statement.

In section 17 of the bill, nondisclosure of certain information, we submit, is legitimate, however, we feel that long-term care facilities should fall under that subsection 17(2) requiring the disclosure of the financial records as the public interest outweighs the interest of confidentiality.

Mr. Chairman: Are there any more comments you want to make?

Ms. Wahl: I have no other comments.

Mr. Chairman: Are there any questions from any members of the committee? Thank you very much for giving us your thoughts on the matter. The next one is Terry Howes. This is exhibit 58 in your book. Is Terry Howes here?

The next one is the Associated Credit Bureaus of Ontario. If they are here, perhaps we could hear them first and then see whether the other delegation appears. This is exhibit 83 in your book. Will you just identify yourselves for Hansard?

#### ASSOCIATED CREDIT BUREAUS OF ONTARIO

Mr. Chercover: My name is Chercover and I am counsel for the association. I present Hugh Ferguson, who is the president of the association.

Mr. Chairman, ladies and gentlemen, when filing our brief, which as the chairman pointed out is exhibit 83, I indicated our feeling that no further oral submission was really necessary, but as a courtesy to the committee, we would like to make ourselves available to deal with any questions or expand anywhere where the committee felt that expansion on the brief was necessary.

I will move to a mere summary of what our brief contains, essentially three points, which will be found on page 8 of the brief. Our respectful recommendation is for exemption from the act of those corporations which are already regulated by the Consumer Reporting Act. I submit there is absolutely nothing novel or innovative in that proposal. There are literally dozens of legislative examples of such exemptions.

I cite the Business Corporations Act, which exempts other types of corporations that are already governed by existing legislation, such as credit



unions and co-operatives. Other examples are the Personal Property Security Act, which does not apply to transactions under the Corporations Securities Registration Act, or the Pawnbrokers Act. There are similar exemptions in the Consumer Protection Act, the Certification of Titles Act and so on.

The second recommendation is to deal with the potential confusion which must inevitably arise by the use in two different statutes of the same words to mean two different things. The expression "personal information," defined under bill 34, includes information that is quite specifically not personal information but credit information as defined in the Credit Reporting Act.

It is a fact that the number of lawyers who have to deal with the Credit Reporting Act is minuscule. The reason for that is that act is extremely clear and consumers who deal directly with consumer reporting agencies can do exactly that; they can deal directly. They do not require intermediaries and lawyers and that sort of thing. This capacity to deal directly has given rise to an accuracy rate which is absolutely phenomenal.

However, introduction of a highly publicized, new piece of legislation that tells the consumer that literally everything recorded about him from his name and address on down is personal information and may be subject to some ill-defined protection from, I think the expression is, "unjustified invasion of personal privacy," could produce an avalanche of consumer inquiries to members of our association, when we all know that is really not what Bill 34 is designed to create. That is not the intention of the bill at all.

Finally, we have attempted in our brief to show that the functioning of our industry as it is currently regulated is efficient. It is co-operative of government and it is beneficial to both credit granters and consumers alike. In effect, we facilitate commerce for the creditworthy.

It is just a question of cost of goods sold being increased for the noncreditworthy and not for the creditworthy. We facilitate the carrying on of business and even restrain the tragic individual examples that so many of us have seen of consumers getting in over their heads, getting into trouble. Such a system, I submit, should not be disrupted unless there is a very good reason to do so.

4:10 p.m.

The reason not to disrupt it is that if the consumer's record is emasculated to the point where it is no longer a document that can assist a credit grantor in achieving a decision as to whether to grant credit and at what level, if that record becomes emasculated because information which is currently available as a matter of public record becomes unavailable, either because the head of an institution interprets the act as restricting him from releasing that information or because the procedure to obtain it becomes so cumbersome or so expensive that it is impossible, I submit that we are going to lead into a situation in which industry and commerce will not be able to function in the manner that they have to date.

I conclude with this. Thus, we have recommended the insertion of some form of saving provision which would permit the heads of institutions, as defined in the act, to continue to disclose, I will use the words "personal information"--if we should fail to redefine that unfortunate phrase--of the nature of credit information as defined in the Consumer Reporting Act to any consumer reporting agency that remains licensed under that act. That is the summary of the submissions of this bureau. We are available to answer any questions from any members of the committee.

Mr. Sterling: You mentioned first that there should be some opting out of certain kinds of agencies. What agencies are you referring to?

Mr. Chercover: As I understand it, the legislative intent of this government is that all agencies of government shall be covered by this act, but private industry will not.

Mr. Sterling: That is correct.

Mr. Chercover: If that is true, then all we seek is a statement in the act of that exemption. That would go a very long way to satisfying our concerns.

Mr. Sterling: An exemption of private industry?

Mr. Chercover: No. An exemption of industries which are licensed and operating strictly under the Consumer Reporting Act.

Mr. Sterling: What are those?

Mr. Chercover: They are all licensed credit consumer reporting agencies as defined in the act, credit bureaus.

Mr. Sterling: Are they schedule 1 or 2 agencies?

Mr. Chercover: I am sorry; schedule 1 or 2.

Mr. Sterling: So it is really not a problem then. From my understanding of the act, I do not think that is a problem. However, I do not know what kind of comfort is necessary in order to assure you of that. In your definition of personal information, you are talking about a definition in two different acts, are you not?

Mr. Chercover: Yes, I am.

Mr. Sterling: You are talking about Bill 34 and the Consumer--

Mr. Chercover: And the Consumer Reporting Act, yes.

Mr. Sterling: Which one do you want changed?

Mr. Chercover: I would personally like to see the expression "personal information" deleted from Bill 34 and some other expression used. The reason for that is very simple. The average individual, who is very aware of his rights under the Consumer Reporting Act because it has been in place now for 12 or 14 years and it functions well, may not be aware that the type of privacy that is being offered to him under Bill 34 does not apply to his consumer credit record.

He is going to see the expression "personal information." He is going to know that it includes his name, address and phone number. He is going to walk into a credit bureau and say, "You may no longer list that information and disseminate it to members of the public because I am entitled to my right of privacy." Then it is going to be the function of the employees of that credit bureau to say, "We are sorry, but you see, that does not apply to us," if we are granted that exemption. If we were to change the words "personal information" to some other denominative, it would help to get rid of this potential confusion.



Mr. Sterling: You are talking about potential confusion. Your last point was that you wanted--

Mr. Chercover: I want a sort of grandfather clause that would say, "All right, credit reporting industry, to date you have been able to get this information and we will see that you do."

Mr. Sterling: Okay, but part of the thrust of this act is to create greater privacy rights for the citizens of Ontario. Part of my concern is that this government--and I am not just talking about the present government; I am talking about the governments of Ontario, of which I was a member for a period--have not addressed the whole question of privacy. When they ask an individual for information about himself, they do not tell that individual where they may or may not use that particular piece of information. Therefore, I find it hard to accept that we can continue to allow a potential indiscriminate use of personal information, as defined in Bill 34. It should be clearer.

My own view is that for every piece of information that a person gives to a government agency, it should be fully understood how wide and where it is going to be used. If you get information, for instance, in terms of motor vehicle licences, names or whatever it is, then the individual should clearly understand that when he provides that information. Do you not agree?

Mr. Chercover: I agree to this extent. Personal information, as defined in the act with which I am so familiar, the Consumer Reporting Act, is very strictly limited. Personal information cannot be disclosed by a consumer reporting agency except under very strictly limited circumstances.

I am not here to speak to that. I am here to speak only to credit information as defined in that act which includes--you will find it in the brief--name, address, employment history and credit transactions in essence. I am saying those are currently not protected as a matter of privacy and not protected beyond the protections of the act.

I would like to try to persuade you, if I can, that not only are they not protected, but they should not be protected for this reason. Consumer credit transactions--

Mr. Sterling: Before you go on, when you are talking, for instance, about employment history, who is providing that to you?

Mr. Chercover: That comes from many sources, usually from the consumer himself.

Mr. Sterling: However, it is not coming from a government source.

Mr. Chercover: No, it is not.

Mr. Sterling: Therefore, we are not talking about government information.

Mr. Chercover: We are talking about government information in the sense of bankruptcies, registrations under the Personal Property Security Act, realty registrations and that sort of thing. Yes, we are.

Mr. Sterling: Those are a matter of public knowledge anyway, are they not?

Mr. Chercover: They are indeed.

Mr. Sterling: If you have a licence for real estate, that should be public knowledge.

Mr. Chercover: The thrust of my brief is that if Bill 34 does not change that, if those matters which are now public record remain public record, then I am satisfied.

Mr. Sterling: The thing I do not know is whether you have other information within the credit bureau that would be excluded by the act. Can you help me out on that at all, Frank?

Mr. White: On the first question about the credit bureaus, right now they were not on the list of the agencies covered that the Attorney General tabled. They are not viewed as an agency of government. I think that is fairly clear.

On the second one, the problem is recognized, and it is continued access to what is generally perceived to be public personal information. It is public right now, such as the land registry information, where one can go in, pay a fee and anyone has access to that. I believe the Williams commission viewed that there was a public interest in knowing land ownership, as opposed to a privacy interest, which was paramount. That situation has been recognized and a look has been taken at it. It is specific to a number of personal information banks that the Ministry of Consumer and Commercial Relations operates: the land registry, personal property security registration. I believe there is one more.

4:20 p.m.

Mr. McCann: There are a number. I cannot name them all at the moment. There are the land registries, the Registry Act, the land titles system, the Personal Property Security Act. I am sorry; my memory fails me. There are several others maintained in the Ministry of Consumer and Commercial Relations.

The basic principle is that anybody who is curious about the contents of those registries can have access to them for the purpose of determining financial transactions, and so on. The whole essence of the registry is open as it would not work if it was not completely open. The Attorney General realizes that Bill 34 may not recognize that fairly specialized class of data banks which ought to be recognized in the bill.

Mr. Sterling: Is there an intent by the Attorney General to clarify that in the bill?

Mr. McCann: Yes. The ministry will be proposing amendments to meet that specific point. There may be other things in the presentation that get us into other areas, but on the question of these large public data banks which always have been public, the ministry is aware of the problem and will be proposing amendments to address it.

Mr. Chercover: That is most satisfying to hear.

Mr. Ferguson: That is what we were looking for, to confirm the comments made by Mr. Scott on March 26 in his address to the procedural affairs committee. On page 11 of his comments, it says, "The act shall not be



applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this act came into force." We want to make sure when the final wording of the act comes out, that is distinguished.

Certainly in our business at present, anyone who can take anything the wrong way in regard to his or her credit history, especially if it happens to be a little dicey at that time, will do so. We want to make sure the information we have had access to historically remains accessible since, particularly with registrations under the Personal Property Security Act and this type of information, it is paramount to a credit grantor making a decision on the granting of credit.

If anyone takes this a step further and tests it, it could create a whole new set of problems for the credit-granting industry until it is cleared up. We want to be proactive in making sure this type of information is clearly not part of what Bill 34 is intended to do. Mr. Chercover is making the point that the Consumer Reporting Act is very clear about what is credit information and what is personal information. This act may not be quite so clear. Things that are in the CRA as credit information appear to fall under personal information in Bill 34. We are concerned that the public may have a problem in dealing with that.

Mr. Chairman: Anything else?

Mr. Sterling: No, that is fine.

Ms. Gigantes: Who runs the credit bureaus of Ontario? Are they run on a subscription basis?

Mr. Chercover: No, to the best of my knowledge, they are all private companies, with the exception of one. As my brief points out, they were originally owned by merchants.

Ms. Gigantes: Were they run on a regional basis?

Mr. Ferguson: Yes.

Ms. Gigantes: If somebody has wages garnisheed, does that appear on the credit record?

Mr. Chercover: Yes.

Mr. Ferguson: No, not at present.

Mr. Chairman: There you are; you got a yes and a no.

Mr. Chercover: I meant yes, go ahead.

Mr. Ferguson: Under the system we use at present, judgements as obtained from the court system are put on the consumer's credit report. I am not aware of any bureaus--and I am president of our association--that put garnishees on. I should point out the main reason they do not put them on is that it costs too much to store the information in the database and that the information is not really relevant to the credit grantor.

The credit grantor has told us time and again: "We do not need that information. We do not wish to copy it down. What we do is sit and listen to

you reporting it back." So we quit keeping it. Under the Consumer Reporting Act, we could keep that information, but it is not relevant to the credit grantor at this time and therefore, we do not keep that information.

Ms. Gigantes: I do not understand why it is not be relevant. If I were lending money to somebody, I would want to know whether--

Mr. Ferguson: The fact that the man was sued is the relevant part, not the fact that he had to be garnisheed. The judgement itself is the important part, not the recovery of the money after the fact.

Ms. Gigantes: I understand. Can I ask an associated question? I do not know whether the ministry assistant will be able to help us. If a garnishee is placed by the Ministry of Community and Social Services on the wages of a spouse in a court order under the Family Law Act, is that a court record?

Mr. McCann: I had better not speak too quickly, but I think so.

Ms. Gigantes: I am just curious, because we have set up an enormous mechanism for the government to enforce garnishment proceedings in cases where a spouse is deficient in family law payments.

Mr. Chercover: Perhaps I can help here. The garnishee is an enforcement procedure. Mr. Ferguson used the word "irrelevant," but what is relevant from the point of view of the consumer's credit history is the debt or that judgement which reflects the debt and, of course, the satisfaction of the debt.

Ms. Gigantes: If there is a family law settlement without a court judgement, does the credit bureau know that?

Mr. Chercover: No. Not unless that is reported to it.

Mr. Ferguson: we do not have access to that information at present. Up until now, we have not had access to that information. It might help the province if we did have access to that information to recover those funds more easily, but at this point, we do not have that information.

Ms. Gigantes: I do not understand how it deals with recovery. I understand why it would deal with a decision to loan money, but how would it help in recovery?

Mr. Chercover: The province is an extremely large user of credit-reporting services. The determination whether to press may be made on the basis of the probability of recovery. That decision may be assisted by the drawing of the credit report.

Ms. Gigantes: I see.

Mr. Ferguson: It may also be that if the individual who owes the family court under that type of order attempts to get more money, the credit grantor, knowing that person has a family order, may be reluctant to lend him the money because that family order may be enforceable by an attachment on wages that would prevent the credit grantor from getting his money back.

Ms. Gigantes: In most cases, there is no order. There is an agreement. The agreement is not an order.



Mr. Ferguson: We do not get the information.

Ms. Gigantes: Nevertheless, there may be a situation in which the person ordered to pay does not pay. The agreement is enforceable, and the Ministry of Community and Social Services will enforce it. But is there a court order that ends up in your records? That is what I am curious about.

Mr. Ferguson: No. The only time we become aware of such an order is when--

Ms. Gigantes: You have not gone through it yet because we have not started it yet in Ontario.

Mr. Chercover: It may be something you do wish to be reflected in the consumer's credit record. That is something that bears further investigation. It would be very useful.

Mr. Ferguson: Recovery of those kind of funds with that type of a system would actually be enhanced by having it as part of the credit record.

Ms. Gigantes: I am sure it would be great for your purposes, but I worry about it from our point of view when we look at the implications for personal privacy.

4:30 p.m.

Mr. Ferguson: It is the same as with several of the federal jurisdictions now. The only time we find out there is an attachment by income tax or what have you is when we put on a garnishee and are told there is already a federal attachment on the man's wages. We are not given any of that type of information. We do not have access to it now.

Our reason for submission is that we do not want our access cut to many of these areas. The way some of the definitions and things are written in the present bill could set the consumer to not understanding under what portion he falls.

Ms. Gigantes: Could I pursue this one further step? I am interested in what you have just said. If a creditor decides to take action against a debtor and attempts to garnishee wages, can he be told at that stage an action has been taken by Revenue Canada?

Mr. Ferguson: They have to return the garnishee and give a reason for that. Under normal circumstances, they state what that reason is, that it is an attachment by the federal government. The employer normally returns the garnishee to the court and advise the court that there is at present an attachment by whatever department or segment. At that point, we are notified that our garnishee is not going to be honoured.

Mr. J. M. Johnson: You gather credit information on individual consumers. Is that information available to those individuals?

Mr. Chercover: Absolutely. Section 11 of the Consumer Reporting Act requires a consumer reporting agency to furnish the consumer without charge with his entire credit record so he may know what its contents are and correct any inaccuracies.

Mr. J. M. Johnson: How does he go about correcting it?

Mr. Chercover: It is very simple. He writes or attends. If he makes a written request, it can be sent by mail, or he can attend in person at his local credit bureau. He identifies himself and an employee of the local credit bureau then calls up his credit record from the database and gives him his credit history. If the man says, "There is a judgement on there that I paid off six months ago," that is fine. We will confirm from the source that the judgement was paid off and that immediately goes on to the credit record.

Mr. Ferguson: If I might help you out, in 1985, the 40 credit bureaus in this province did 42,120 consumer interviews. Of those consumer interviews, 66.01 per cent of the files were correct as reported, 33 per cent of them had minor changes of address and employment, etc., which do not affect the consumer's ability to get credit, and 0.003 per cent had what we call an amendment required as a result of improper information.

A perfect example is a father and son who have the exact same name, but one is senior and the other is junior. If they are living in the same place, on occasion a mistake can be made. The consuming public in Ontario, as has been widely publicized, have complete access to their files. In the credit bureau industry, we take it upon ourselves if there is an error to confirm that error and change that file at no cost to the public.

Mr. J. M. Johnson: Where does a politician (inaudible) in the order of things?

Mr. Chercover: I wish I could answer that question.

Mr. Chairman: That is covered under the section on privacy. Thank you very much.

We have one more witness this afternoon. Terry Howes is here with exhibit 58, which is in your binder.

#### TERRY HOWES

Mr. Howes: Ladies and gentlemen, my name is Terry Howes. My wife and I earn our livings in the unlikely business of tracking down heirs to estates. Usually we have only sketchy information to go on, such as a person's address or 50 years ago. The clue we need to pick up a trail is generally buried in some government file or other. We frequently request what is termed personal information from various government departments. Hence, we are in a position to give you some insight into the current state of freedom of information in our province, or I should more properly say lack of freedom of information in our province.

Before I suggest for your consideration certain additions to the proposed act, I would like to give an example to show just how much we need this act.

In the 19th year of the reign of Queen Victoria, as they quaintly dated legislation in the old days, which according to my calculations was 1887, this Legislature passed a law entitled An Act respecting the Publicity of Certain Matters affecting Traders. This legislation says in part that every person shall hereafter have access to and be entitled to inspect the several books of the high courts of justice.

A few blocks from where we are at this moment can be found an obscure office known as the accountant of the Supreme Court of Ontario. This office is



the custodian of all moneys lodged with the courts and at present it holds more than \$200 million. Once a year the accountant, whose name is E. J. McGann, must publish in the Ontario Gazette a list of people who have had money on deposit with that office for 10 years, advising them that henceforth their funds will no longer earn any interest and will eventually escheat to the crown.

Here is the latest list that appeared in the Ontario Gazette of December 14, 1985, not a very impressive list by any means. It contains 32 names, gives neither the last known address, although by law it is supposed to, nor the amount that is coming to the person. For example, one gives a name and nothing else.

In June 1984, I asked Mr. McGann whether I could see a book called the Order Book, which he is supposed to keep under the rules of practice. Had it existed, this book would have given us a clue as to where to find the people in the advertisement. It turns out there is no such book and never has been one, although there is supposed to be one. I therefore asked to see the judges' orders, which any citizen has a right to see, and the accountant referred me to a lawyer named Janet Minor at the Ministry of the Attorney General.

Here is a summary of a conversation I had with Ms. Minor on June 8, 1984.

Howes: "Why can I not see the information on file with the accountant at the Supreme Court?"

Minor: "We took the position that he cannot reveal private financial information."

Howes: "If judges' orders are public at one place, how can they be private in another?"

Minor: "There may be information there that is not in the judge's order."

Howes: "Why can I not see just the judge's order?"

Minor: "Just because."

Need I say more? I have with me and I had intended to tell you about an even more outrageous example, believe me, but my wife who is with me today fears repercussions on our livelihood. Suffice it to say that this new law is badly needed.

To assist you in your deliberations, I respectfully wish to suggest the following changes to section 21 of the proposed act.

First, information concerning an individual who has been dead for more than 20 years should not be considered personal information. See the Canadian Privacy Act under interpretation, section 3(m); that is the federal act. It makes sense. Obviously, if a person has been dead for more than 20 years, what harm can we do them? In these files information can often be found helping to locate his or her heirs.

Second, make it mandatory for a ministry that might have a person's address to forward a letter to that person provided the contents can be seen to be of benefit to that person. In this regard, I read the following from the Solicitor's Guide to Estate Practice in Ontario: "The federal departments of

health and welfare and Veterans Affairs may also be of assistance. They have in their data banks the current addresses of all individuals receiving any forms of assistance," including this, that and the other thing. "The departments will not divulge addresses of recipients to executors, administrators or anybody else; however, a letter to the individual will be forwarded by the department to the last address on record. The recipient of the letter then has the option of responding or remaining anonymous as he or she desires."

It is simple enough and basic enough. They have the addresses. If they are presented with evidence and a copy of a letter backed up by evidence that this is information to the benefit of a person, surely there is no harm in sending a letter. That is what I ask and urge you to put in the legislation.

4:40 p.m.

Third, disclosure of personal information should be allowed if disclosure would clearly benefit the individual to whom the information relates. This is in the federal act, subsection 8(m) of the Privacy Act. I am sure it will not surprise you to hear that what we ordinary mortals would consider benefit to an individual is not necessarily how the bureaucrats might see it.

For example, more than 475,000 Canada savings bonds worth more than \$180 million have not been cashed and are no longer paying interest. Many go back to 1946. I requested the names and last known addresses of the owners from the Bank of Canada. They decided, and this decision was confirmed by the office of the Information Commissioner of Canada on appeal--can you believe it?--that this disclosure would not be of benefit to the individual. The Bank of Canada just keeps the money, believe it or not. I know it is hard to believe, but I have the documentation right here.

Thanks for listening to me and best of luck in your deliberations. I will be pleased to answer any questions you might have.

Ms. Gigantes: I am absolutely fascinated.

Mr. Howes: I wish I could show you this one; I really do.

Ms. Gigantes: Do not tantalize us. I take it that you earn your living by bringing to the attention of people who are not aware of it the fact that money is owed to them.

Mr. Howes: That is so.

Ms. Gigantes: You take a commission.

Mr. Howes: That is right.

Ms. Gigantes: Is it the commission that worries--I have forgotten the title of the gentleman you referred to who is supposed to keep--

Mr. Howes: Mr. McGann?

Ms. Gigantes: Yes.

Mr. Howes: The accountant of the Supreme Court?



Ms. Gigantes: Yes.

Mr. Howes: I cannot imagine what it was.

Ms. Gigantes: Have you used the Department of National Health and welfare letter-forwarding system?

Mr. Howes: Yes, I have.

Ms. Gigantes: How often have you used it?

Mr. Howes: Dozens of times.

Ms. Gigantes: Dozens?

Mr. Howes: Dozens, I am sure. Of course, a person has to be receiving his old age pension or whatever so he obviously would have to be 65 or older. If he is under, they do not have the address.

Ms. Gigantes: On some kind of benefit.

Mr. Breaugh: We are having a little trouble with the microphone. Do you have a briefcase between you and the microphone?

Mr. Howes: I guess I do. I am sorry.

Mr. Cnairman: That might help.

Mr. Howes: I am sorry. Go on with your question.

Ms. Gigantes: When you sought through the office of the Information Commissioner to have access to the list of names of people who had uncashed Canada savings bonds--

Mr. Howes: You will not believe the answer they gave me. This is hilarious. They said it must be that these are very patriotic people who want to help out the federal budget and therefore do not want the money. Honest to God, that is what they said. The fact is that this is a very substantial source of income to the Department of Finance. They do not want me or anybody else giving that money back. There is no way. There is in the act a method for them to do it on their own computers, to find where these people are and send them the money. I told them how to do it, but they did not do it and they are not going to do it. It is easy. There is nothing to it.

Ms. Gigantes: Did you have a written decision from the Information Commissioner on that?

Mr. Howes: I did. Would you like to see it?

Ms. Gigantes: Would you be willing to provide us with a copy?

Mr. Howes: Why not? I have nothing to hide; nothing whatever.

Ms. Gigantes: I would be very interested in seeing it.

Mr. Howe: Sure.

Ms. Gigantes: You actually make a living doing this.

Mr. Howes: Yes.

Ms. Gigantes: I'll be damned.

Mr. Howes: I have here a one-page précis of my suggestions, which I hope you will--I hope they are common sense.

Mr. Chairman: We have picked them up on Hansard and we will have them printed up. If you have an extra copy, that is fine.

Mr. Howes: Do they make any sense? Does anybody think they make sense?

Ms. Gigantes: Mr. Chairman, you are going to make sure we get a copy of the Information Commissioner's report.

Mr. Chairman: Yes.

This concludes the witnesses for this afternoon. We have more witnesses booked for next week. We have a possibility of more the following week. We may be in a position to conclude the public hearings section within two weeks, which is a little faster than we thought. A number of people have indicated that their concerns have been met or that it is not possible for them to appear before the committee. We stand adjourned until next Wednesday afternoon.

The committee adjourned at 4:45 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY  
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT  
WEDNESDAY, MAY 14, 1986





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Substitution:

Gigantes, E. (Ottawa Centre NDP) for Mr. Martel

Clerk: Forsyth, S.

Clerk pro tem: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Pharmaceutical Manufacturers Association of Canada:

Hume, F., Counsel

Individual Presentations:

Harte, P. J.

Weitz, D.

From the Ontario Institute for Studies in Education:

Humphreys, E. H., Principal Investigator, Ontario Student Record Information Management Project; Professor, Department of Educational Administration

Weintraub, L. S., Senior Research Officer, Ontario Student Record Information Management Project

From the Ministry of the Attorney General:

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, May 14, 1986

The committee met at 4:07 p.m. in room 151.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT  
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: Gentlemen, we can get started. The first brief this afternoon is from the Pharmaceutical Manufacturers Association of Canada. Fred Hume is the counsel. Would you come up and take a seat at the microphone? As you may know, we normally provide an opportunity for you to say whatever you want to say, and then the members may have some questions for you. This brief is exhibit 99.

PHARMACEUTICAL MANUFACTURERS ASSOCIATION OF CANADA

Mr. Hume: Thank you. My name is Fred Hume. I am the legal counsel for the Pharmaceutical Manufacturers Association of Canada. I practise law in Toronto, and next month I will have completed 50 years of practice in this city. Associated with me, and here to assist in answering some technical questions, is Samuel Bottner. He is a lawyer, and the regulatory adviser for Ciba-Geigy, one of the companies in PMAC. You have a submission made directly by the association, which I do not propose to read, but I should like to take a few minutes to indicate the position of the association.

The Pharmaceutical Manufacturers Association of Canada, popularly known among its members as PMAC, is a voluntary association of 65 members. They supply about 90 per cent of the prescription pharmaceuticals sold in Canada. Of the 65 companies, 43 have their head offices in this province. They have more than 25,000 employees and they have a couple of billion dollars' worth of plant equipment.

To be able to market a pharmaceutical product, one is in the position of having to submit very detailed, confidential, private trade secrets to the health protection branch in Ottawa. As a result of experience in the United States, where some of the generic manufacturers got privy to some of this confidential information under the US act, representations were made to the federal government at the time the Access to Information Act was passed.

As a result--and you will probably be as familiar with this as I am--section 20 of the Access to Information Act sets out four categories of headings under which the head shall not disclose information. The first heading is trade secrets. The other three headings relate to technical information that would prejudice negotiations and so on. They are all spelled out in section 20 of the federal act. Subsection 20(b) gives the head the right to disclose information that under subsection 20(1) he is forbidden to disclose with respect to the three headings, but not trade secrets.

Thus, under the federal act trade secrets, as a result of the representations made by the PMAC and others, are protected. Notwithstanding



the opinion of the head, he is forbidden under subsection 20(6) of the federal act--because it is not permissive, it is mandatory--to disclose information that relates to trade secrets.

He can disclose information--and the wording is similar to the bill you are considering--of a financial, commercial or scientific nature that is supplied on a confidential basis. He can disclose information the disclosure of which would result in financial loss to a company, and he can disclose information the disclosure of which could be expected to interfere with contractual negotiations; but he cannot disclose trade secrets. I might say in passing that in order to be disclosed under the three headings where it is permitted to do so, it must relate to public health, public safety or the protection of the environment. Anybody who wants to persuade the head he can disclose this thing has the onus of indicating that it falls within those categories.

One of the concerns of the pharmaceutical industry, as indicated in the brief you have before you, is that there is no such prohibition. Under subsection 17(1), "A head may refuse to disclose a record that reveals a trade secret." Under subsection 17(2), "Subsection (1) does not apply to a record where the public interest in its disclosure outweighs the interest of any person, group," and so on.

The differences between the two statutes are that federally he cannot do it; and with respect to those areas where he can do it, it must relate to public health, public safety or the environment. Under the bill you are considering, there is no such restriction. It is of very great concern because in this province, under the Ontario drug benefit plan and other matters, the manufacturers have to supply the same information. Under the ODB plan, to have your product sold in this province and listed in the Ontario Drug Benefit Formulary, it has to be passed by the technical committee of the Ministry of Health, and this same information has to be disclosed. It is a matter of real concern that some of the things that are regarded as confidential trade secrets would become available if the head decided to disclose them.

There are protections built into the act. I know, because I have been through it; I am perhaps not as familiar with it as I should be. One of the matters noted is that under section 46, dealing with the matter of appeals, "the exercise of a discretion of the head to disclose" something under section 17, which is one of the exceptions, "is not appealable."

In the reply that the Honourable Ian Scott sent back to the association in a letter I have, he said not to worry, because, while it is not spelled out in the act, you always have the right of a judicial review. As a solicitor practising here for a long time, I think it would be very difficult for me or anybody else to persuade a Supreme Court judge to interfere with a specific discretion that is allocated to a head under the act. While it is true that you might apply for a judicial review of a decision you thought was unreasonable, unfair or damaging, you would have a very great deal of difficulty persuading a judge to interfere with that discretion. This has been the situation in other areas.

Thus, there are two matters that are of real concern. One is the fact that, under this bill, trade secrets are not protected, as they are in the federal Access to Information Act. The other is that there is no right of appeal. Under section 44 of the federal act, as you are aware, you can appeal to the Federal Court for a review of the commissioner's decision. A company that feels it is being seriously prejudiced or damaged has at least the right

to go to the courts. This bill gives no such right. It is not in the brief, but it is an area of some concern. I read a brief from the Board of Trade of Metropolitan Toronto that raised the same point, and I think there are others who have probably dealt with you on that.

That is basically why the brief was filed with you and why an opportunity was asked to indicate the concerns. The question of trade secrets is fuzzy. It is not defined either in the federal act or in your act. Probably it will be defined some day under the federal act because of the right to appeal to the Federal Court. Somebody is going to have to decide exactly what it means, but people in business know pretty generally what it means. It is something you develop. As you realize, under the Patent Act, you cannot patent the drug, but you can patent the process, the formulas and all the rest of it. The federal government has indicated an intention to amend the Patent Act at some point, as you have probably read in the paper.

In any event, this information, which members of the PMAC regard as very confidential, is of real concern to them because of the growth of generic manufacturers. The generic manufacturer, generally speaking, does not do any research. He simply applies for and gets a compulsory licence. He pays a royalty of four per cent and he can put the product on the market an awful lot more cheaply than a member of PMAC. I am a lawyer, not a pharmacist, but I have heard many times that to get some of these products on the market costs in excess of \$10 million in research, clinical trials, experimentation and so on. That is generally the area.

As I say, I am not a pharmacist. Mr. Bottner is connected with one of the large companies, Ciba-Geigy. He is available and will come forward if there is a question I cannot answer. I cannot give you the names of these drugs; I cannot even spell them, and I certainly cannot pronounce a lot of them, but I am aware of the concerns.

I had quite a bit to do with presentation to the federal government as a result of the Access to Information Act being passed there, so I will do my best to answer any questions. If I do not have the answer, I will undertake to obtain it. The head office of PMAC is in Ottawa, so it would take me a few days to get the information you want if I do not have it.

Ms. Gigantes: Thank you for your presentation. Your concern, as I understand it, relates pretty exclusively to section 17, connected with section 46, where you would like to have an appeal.

As you have indicated, subsection 17(1) begins, "A head may refuse to disclose a record." The Attorney General (Mr. Scott) has indicated to us--I do not know whether the committee will be in agreement--that we should change that phrase to read, "A head shall refuse to disclose."

Mr. Hume: That is in the federal act and it would be desirable.

Ms. Gigantes: But your concern is really with subsection 17(2).

Mr. Hume: Yes.

Ms. Gigantes: I am looking at the second-last paragraph on page 2 of your brief. You say, and I assume it is in relation to subsection 17(2), that your concern is that the decision about whether the public interest in the disclosure of a record "outweighs the interest of any...organization in its continued confidentiality" will be "a political rather than an objective standard." Can you explain what an objective standard would be?



4:20 p.m.

Mr. Hume: I certainly know what a political decision is after all the years I have been around. An objective standard would be something you would expect from a member of the judiciary or a chairman of one of your commissions or boards in this province. Take a board such as the Ontario Municipal Board or the Ontario Highway Transport Board. I know from personal experience that those decisions are made on the same basis as a judicial decision.

That is as opposed to a political decision. I think it is fair for me to say that in some cases over the years, political expediency has had a part if somebody is responsible and under the direction of the head of a department. I do not know whether I can answer it any better than that. If the commissioner who is to be appointed is completely independent and has the same status as the head of some of your boards, I would expect his decisions to be objective. You hear rumours from time to time, and you cannot be sure they are true, but the appearance to the public is that some of these decisions are influenced politically by the minister in charge.

Mr. Mancini: That was under the old government.

Mr. Hume: That could be.

Ms. Gigantes: The reason we have bills such as this is that our past experience has been that it has been expedient for government to withhold information. That has been the pattern in general. What we are trying to establish in this legislation is a counterweight to that general expediency of secrecy.

Mr. Hume: I think we all agree with that.

Ms. Gigantes: Except when it applies to you or to the Pharmaceutical Manufacturers Association of Canada.

Mr. Hume: No.

Ms. Gigantes: You seem to feel that there can never be a situation where a public interest in disclosure is going to outweigh legitimately the interest of your organization or its members in retaining complete confidentiality about trade secrets. I can imagine a number of instances where the public interest, in my judgement, certainly, and perhaps in the objective judgement you might care to give as an example, might well be served by the disclosure of trade secrets.

Mr. Hume: If you patent something and develop a process as a result of your efforts, you are entitled to the benefits of that.

Ms. Gigantes: What if it poisons people?

Mr. Hume: You are protected here with respect to pharmacy because it would never get through the health protection branch procedure under the Health Protection and Promotion Act.

Ms. Gigantes: Sometimes we find out, and you will be aware of this, that after long use of certain kinds of medicines, which have been approved, there are serious side-effects. Sometimes a government may need to indicate both to members of the public and to rival firms that a certain product has been found after long use to be dangerous. Feminine tampons are one example.

Mr. Hume: That is not disclosure of a trade secret.

Ms. Gigantes: It may well be disclosure of a trade secret. It may be some element in the product that is found to cause the problem. You then have to go to other producers and ask, "Is this element in your product?"

Mr. Hume: The federal act has protected that by saying certain information may be disclosed if it relates to public safety, but the federal act has still seen fit to protect the confidential trade secrets of a company. Federal officials can take a drug off the market just by a stroke of the pen. They do not need to disclose anything; they can just say, "This is dangerous," and take it off, and they have done that.

Ms. Gigantes: An informed public these days requires a bit more information than that.

Mr. Hume: The trade secrets with which the pharmaceutical manufacturers are concerned are the formulations, methods of mixing and all the rest of it. All the side-effects of all these things are disclosed to the satisfaction of the health protection branch and your own committee before the product is permitted to be sold. If it is discovered later that something is wrong with it or that it causes effects, then it is taken off the market, but you still do not have to disclose the confidential trade secrets of the manufacturers and how it is done. You just tell them to stop making it.

Ms. Gigantes: No, it is not as simple as that when you have various compounds and chemicals that may have synergistic effects.

Mr. Hume: I have been legal counsel for this association for nearly 30 years and I do not know of any situation that has arisen where a product that was found not to be as beneficial as they thought--you never can tell until you have tried it for a while, even after clinical trials--required the disclosure of the trade secrets of the manufacturer to protect the public. They just simply withdraw the notice of compliance.

They are now starting to re-evaluate in Ottawa, as you may know, and there is talk that these pharmaceutical products in the health protection branch will be revalued every five or six years. There are lots of built-in safeguards.

Ms. Gigantes: Can you go back to take a look at the case of the withdrawal of the feminine tampons of a certain manufacturer, the reasons for that withdrawal and the information that was given out which was, in my view, probably trade secret information about the elements that were causing the problem with those products?

Mr. Hume: I do not know that this is the fact. It may well be. The recent Ortho case on birth control pills is an example. It was discovered that there was a side-effect--the girl had a stroke--which was known to be a possibility, and as a result of which she recovered substantial damages. However, it was not necessary for the court to disclose the trade secrets to find that the company did not do all it should have done to notify the user of the dangers of taking this product.

Ms. Gigantes: That is a different type of case. Thank you.

Mr. Sterling: Mr. Hume, I am a member of the Conservative opposition. One of the problems we have had with Bill 34 has been the



reluctance of the Attorney General until very lately to put forward amendments to this bill, even though it was introduced a year ago. Therefore, there is some confusion about what is proposed in Bill 34 and what the amendments are.

On March 25, almost 10 months after he introduced the bill, the Attorney General indicated he would amend subsection 17(1) of the bill to make it mandatory rather than permissive as it was in the original bill. Our party will support the mandatory provision unless there is other evidence brought before us by other groups that it should remain the way it is. You can be assured that will probably change.

Mr. Hume: When I came up here, I was not aware that any amendments had been tabled. If they have been--

Mr. Sterling: They have been given in the statements, so to speak. I had suggested to the Attorney General, even before second reading, that he re-introduce the bill because I was aware there were many flaws in the bill, as admitted even by his own staff. However, he did not follow that advice and he has created some public confusion as a result.

In terms of the appeal process, I could not agree with you more. I also asked the Attorney General to be more direct about his appeal process. It is confusing now. In order to have a judicial or quasi-judicial review of any nature--I do not really care whether it is a federal court or some other body or commission--there has to be some review process that is fairly easily and directly accessed in that it does not become a matter of discretion in terms of getting that right to appeal, especially when the commissioner in this act has been given much stronger powers than the Information Commissioner under the federal act.

Mr. Hume: One of the concerns I have, and I may be misreading it, is that the commissioner never gets to decide whether something under section 17 is to be disclosed because the section says it is not appealable, presumably not appealable to him.

Mr. Sterling: You and I, as well as the critic for the New Democratic Party, read the law that way. The Attorney General seems to be the only lawyer in Ontario who reads the law the other way in terms of how he interprets the section. However, we are going to change that around. Our party is going to put forward an amendment or support an amendment from the New Democratic Party to make certain the Information and Privacy Commissioner has a right to hear decisions that are made by ministers on whether they will release information.

4:30 p.m.

The problem in relation to subsection 17(2), in terms of weighing public interest versus the private interest on trade secrets, which Ms. Gigantes has raised with you, is the whole raison d'être of a freedom of information act. In the final analysis, the Williams Commission on Freedom of Information and Individual Privacy came down to the public interest versus the private interest. Some would argue that politicians should have that ultimate choice. However, if you go into a freedom of information act and an independent court review process, then that is the ultimate decision the court or that commission must eventually decide on all issues. It also becomes a matter of deciding whether or not it is or is not a trade secret for that kind of thing.

Mr. Hume: That is fuzzy, I am afraid.

Mr. Sterling: Yes. If this committee cannot accept your submission, my suggestion would be to make it a mandatory exemption if it is found to be a trade secret. I have some empathy with the arguments put forward by Ms. Gigantes because I cannot envisage many cases where it would come to the fore, but maybe it would, and I am more protective of the public interest than of what would be there. Are there principles which you or your association can put forward where we might look at amending subsection 17(2) to say what the public interest would be with regard to trade secrets?

Mr. Hume: If you just tied it down to public health, public safety and the protection of the environment, as the federal act has done, we think that would be a step in the right direction because you cannot argue successfully against protecting the public with respect to public health and public safety.

One of the difficulties is that this industry is peculiar in the sense that, in order to stay in business and keep the 25,000 Ontarians working who are employed by the companies here--there are 43 head offices in this province--they have to sell their product. To sell their product in Ontario, which is one of the largest markets, they have to supply this information.

If the manufacturer of a widget has a great patent idea, he does not have to disclose it because it is not something that somebody takes. It is not the same idea as food and drugs. Therefore, because you have to supply the information to stay in business, you are susceptible, as they were in the US. The generic manufacturers had a field day in the US. If you want to check with your staff down there, it caused great concern because these intimate details, that they had spent millions of dollars developing, were suddenly made available under the American freedom of information act. That is one of the reasons the federal government did not go that route. They were aware of the damage it did to this industry and there may have been others as well.

Mr. Sterling: I do not know how relevant this is to this particular bill, but of the 25,000 people, how many are involved with research and development in Ontario?

Mr. Hume: Involved in development?

Mr. Sterling: Yes.

Mr. Hume: I am speaking generally. That is the total number of employees of the 43 companies that have their head offices here. I can get you those figures because they are available. The technical and scientific involvement of the employees is very high in this industry. They employ a great many PhDs and medical doctors in their medical departments. I can get you the figures. I do not know how many there are.

Mr. Sterling: I would appreciate that. I do not know how relevant it is to what we are talking about. There is not much reason for having an act unless you weigh public interest against private interest. Therefore, if you are not going to get the whole way in terms of subsection 17(2), I suggest you write to members of the committee as to what a satisfactory half-way measure might be for you.

Mr. Hume: Okay. As far as I am concerned, let us leave it at that. The way the federal government handled it was not perfect, but they all seemed



to be reasonably pleased. If you went that route, I am sure the people I represent would be reasonably happy. Nobody likes to have his trade secrets disclosed.

You will notice in the federal act that scientific and technical information can be disclosed. It is permitted to be disclosed if it relates to public safety. It has not been tested yet because the act is not very old, but the argument is that, on that basis, the head is free to disclose a trade secret by calling it scientific or technical.

Mr. Sterling: If we take the situation today and the information you are providing to the Ontario government, does the information go to the Ministry of Health?

Mr. Hume: The Drug Quality and Therapeutics Committee is under that ministry. It checks all the pharmaceutical products in the formulary, particularly those under the Ontario drug benefit plan.

Mr. Sterling: Business's concern about government divulging information on a political basis is ill-founded because that right stands today. I do not think there is anything given to the pharmaceutical companies that provide that information. They might be breaching some confidentiality understanding, but you could not sue the government if it produced the formula for whatever it is.

Mr. Hume: Civil servants have some obligation to keep things confidential.

Mr. Sterling: But if a minister stood up and spoke, I do not think it would be a problem in the end. It is being fair and giving the court, which ultimately finds on this decision, guidelines to follow.

Mr. Chairman: Any other questions? Thank you very much, Mr. Hume. We appreciate your submission.

Mr. Hume: Not at all. Thank you, Mr. Chairman.

Mr. Chairman: The next witness before the committee is Peter Harte. This is exhibit 100. The process is relatively straightforward. We give you a chance to say whatever you want to say and then the members of the committee have an opportunity to ask some questions.

PETER HARTE

Mr. Harte: Thank you, Mr. Chairman.

My name is Peter Harte. I am an articling student in the city of Toronto. I would like to thank the committee for an opportunity to make this submission with respect to Bill 34.

My background in this area is that I have worked for about three years as a researcher for Professor David Flaherty, who is director of a privacy project in London, Ontario. Later, I was associated with him on a bibliography on privacy and data protection. We co-authored an article for the Canadian Encyclopaedia on the social insurance number. I also helped the Canadian Bar Association (Ontario) group prepare its submission on Bill 34. As a result of my interaction with them, the concerns I would like to voice today arose.

The key issue I want to speak about is the role of the Information and Privacy Commissioner. My particular concern is the role of the privacy commissioner.

Many people have grappled with privacy and tried to define it. The most appropriate definition is one put forth by Alan Westin, which is "the claim of individuals...to determine for themselves when, how and to what extent information about them is communicated."

Mr. Newman: Who is Westin?

Mr. Harte: Alan Westin is a professor of law at the University of New York and has written on privacy and data protection for some years. His first publication was in 1967.

4:40 p.m.

The issue of control over information seems to be more important with respect to automated data processing because it heightens the sense of a loss of control over information submitted to governments. This sentiment is easily understood, given our democratic traditions and the sense of government as an operation carried on by the people. The problem occurs when information is submitted to government of the people. Suddenly it is taken out of their hands and they have no more control over it.

That is the background. With respect to the specifics of my submission, clause 54(2)(b) states that the commissioner's annual report must contain an assessment of the extent to which institutions are complying with this act. It appears that this is the only section in the act that mandates any investigative function on the part of the commissioner, particularly given that section 55 does not authorize the commissioner to carry out independent investigations. It appears that the commissioner's only source of information will be complaints to him from individuals concerned, presumably, about information that has not been disclosed on their request.

The federal Privacy Act provides that the privacy commissioner can initiate his own investigation where he feels it is warranted. Other data protection legislation, particularly that of the United Kingdom and Sweden, the examples I have provided here, provide rather broadly that the data protection authority is entitled to carry out investigations when it feels that it is warranted and should do so on its own motion. Finally, the Williams commission stated that the data protection authority it conceived of as part of its legislative package should, among other things, have the responsibility for evaluating agency performance under the act.

It appears, as it sits now, that Bill 34 does not provide for this type of function to be exercised by the privacy commissioner wearing his privacy hat. With the exception of the American model, the institutionalization of data protection has inevitably involved some form of active involvement with the implementation of the legislation itself. Therefore I would urge the committee to amend subsection 54(2) so that it reads:

"(2) A report made under subsection 1 shall contain,"

"(b) a report on investigations and an assessment of the extent to which institutions are complying with this act."



I would also urge the committee to amend section 55 by adding the following clause (f):

"55. The commissioner may,"

"(f) investigate the extent to which institutions are complying with the act."

With respect to section 47 of the act, it is not clear to me why the commissioner would authorize a mediator under section 47 of Bill 34 rather than try to effect a resolution of the problem himself. It strikes me that the experience he is going to get in ensuring the bill is in force will be of great significance to him in carrying out other functions, among other things advising this committee when it comes time to review this act three years down the line. If he is removed from that process, then his experience will be of less value.

One idea that came to me was that in using a mediator, some element of impartiality would be preserved in the commissioner's function. If he is the final body of appeal, there may be some validity in preserving an element of impartiality, but since there are few other procedural protections available in the process, there seems little reason to remove the commissioner one step farther from the process, given that his role will suffer in that he will not be as clearly aware of problems that are coming up in enforcement of the act.

Another area that I had some problem with was the area of appeal. As I noted at the outset, privacy involves some sense of control over information and, in this case, control over information submitted to government. Yet section 46 of the act limits the extent to which the commissioner can perform a control function on behalf of data subjects. The information that is taken out at his end, as it were, is information dealing with law enforcement, intergovernmental relations, defence, confidential business matters, matters concerning the health or safety of an individual and matters of public record, which may soon be made public.

Some of these are among the most sensitive of information categories and it is not clear why the right of appeal, limited as it already is to the extent that there is no right of appeal to the courts, is further circumscribed by this provision. The limited right of appeal directly limits the extent to which there is a real right of access.

To that extent, if the right of appeal remains limited, the Information and Privacy Commissioner will do little more than act as a front for whatever government information practices are at the time. He will not be in a position to ensure the bill is being implemented properly or observed in these various information areas. Therefore, I strongly urge that the committee remove this restriction by deleting the last four lines of section 46.

Further to this point, it is not clear why there is not a right of appeal explicitly to the courts such as that found in section 41 of the Privacy Act. If the bill is going to provide for an independent review of government information use and information management practices, there must be some truly independent body that can perform this review.

A significant problem that has cropped up in data protection is that as government budgets become tighter, governments are less willing to commit themselves to information management and restrict the use of information they have in growing data banks, particularly in the areas of social and financial

support data banks. This is a problem the government is going to have to recognize now before it commits itself to making information available to the people in a way that will remain in effect several years from now when the temptation to use social security information of one form or another is enhanced by fiscal difficulties.

It seems to me the investigation that takes place has been removed from the protection mandated by the Statutory Powers Procedure Act, that there is no guarantee the decision of the commissioner will not be motivated by political considerations that have nothing to do with privacy interests and that this problem will be exacerbated when his employment future becomes doubtful.

The only way to ensure impartial evaluation is to provide for reference of the matter to the court. Data protectors on the whole believe a right of access enhances data protection and privacy legislation and that the salutary effect--I will read from a quote--that "the mere existence of access rights is likely to have on records keepers cannot be underestimated."

Rights without a remedy are often meaningless and the provision of a real right of appeal to the courts would do much to ensure that individuals have real rights under Bill 34. It would also do much to ensure the continued success of data protection in Ontario. Therefore, I strongly urge the committee to provide for a right of appeal to the courts from a decision of the Information and Privacy Commissioner.

In conclusion, Bill 34 represents a key and highly necessary piece of legislation that goes a long way toward providing a right of access and privacy in respect of government information. However, it could be substantially improved by ensuring that the commissioner plays a proper role in guaranteeing compliance with the provisions of the bill and by ensuring a right of appeal from the commissioner's decision.

I thank the committee for this opportunity to make a submission.

4:50 p.m.

Ms. Gigantes: Thank you for your submission and the excellent points you have made. To get to your question on appeals, I understand the rationale of the Attorney General on this question and the limitations he would like to see in the bill for review of the commissioner's decision. There is an argument to be made for people who can get to court and ask for a review, de novo, of a commissioner's decision. These are people with power, influence and money. The goal of allowing public access to information is not going to be reached as quickly and as effectively for the public if we allow that process to enter into it.

Mr. Harte: Do you want me to respond to that suggestion?

Ms. Gigantes: Sure.

Mr. Harte: I do not understand why that would be the case. Even if those who have access to the courts are those with power, influence and money, it does not mean that people who do not have influence with the courts will be stymied in their attempts to obtain information through the commissioner, unless you assume there is going to be a problem for everyone equally without access to the courts. In other words, simply providing access to the courts, as there is now in the case of judicial review, for example, does not make



administrative decision-making any less good. It has been always the case that with respect to administrative decision-making, judicial review is available to those with power, influence and money. Unless we assume judicial review is bad in every respect, we cannot start out with the conclusion that making the courts a last vehicle of recourse is a bad one.

Ms. Gigantes: Your concern about the vulnerability of the commissioner has been raised with us before and we have had some ingenious suggestions about how to put the commissioner in a position where he or she is not going to be as vulnerable to expedient choices in matters of freedom of information or privacy protection. You do not feel that by strengthening the position of the commissioner--I cannot even remember what the suggestions were, but they were to provide a very secure position for the commissioner.

Mr. Harte: That has not been necessary yet in Europe, where data protectors are very active and have in many cases made decisions successfully against the wishes of their legislative masters. I think almost all of them are accountable to their legislature rather than to the government of the day per se. Data protectors have successfully resisted pressure from various factions in their legislature to take a particular point of view. Normally, their route is to use their access to the press or the public relations tools they have to ensure that is not a problem for them.

If you protect a data protector too much, you run the risk of his or her not doing a very good job. As with everybody, the fear of being dismissed is always a motivating factor; I suspect it is so for them as well. There are drawbacks to providing excessive amounts of protection. There is then no way to get rid of somebody who is not doing a good job. I do not know what mechanisms have been proposed, but recourse through the courts is probably a cheaper way to do that because it already exists.

Ms. Gigantes: I cannot exactly remember the proposals made by Alan Borovoy of the Canadian Civil Liberties Association, but he had the same concerns you have raised about the influences on a commissioner. Your submission has been very helpful in my understanding of something that should be looked at very closely, and I thank you.

Mr. Chairman: Thank you very much for coming to see us today.

The next witness is Don Weitz. We have a copy of the submission and we will get it to you as quickly as we can. We had a small technical problem: page 1 comes after page 6, but we are correcting that now. Mr. Weitz, you have appeared before committees before and know now they operate. Go to it.

Mr. Weitz: I see you have been on some other ones, too.

Mr. Chairman: A few.

DON WEITZ

Mr. Weitz: Thank you for allowing me to speak today. I emphasize that I am speaking just for myself. This is a private submission, but with any luck I hope to have other self-help groups of psychiatric inmates and former psychiatric inmates lend their support. I do not know whether any other self-help groups have appeared before your committee on this very important issue, but I hope they have.

The issue that concerns me very much in Bill 34 is the right of access to our own medical or psychiatric records, which is actually implied, not specifically stated, in Bill 34.

The title of my brief--since most of you do not have it, I think I will read--

Mr. Chairman: We all have it now.

Mr. Weitz: --from it and do some elaboration as I go on--is Whose Life Is It Anyway? A brief on Bill 34.

I would like to begin by saying that I am a former psychiatric inmate. I call myself a psychiatric survivor because, like many people in our society, I feel I have been fortunate to survive a lot of abuse and what I feel has been torture under the name of treatment.

By way of introduction, about 35 years ago when I was 21, I unjustly lost my freedom and all my rights for almost a year and a half as a result of being involuntarily committed to a psychiatric institution in Boston. I was committed to Mclean Hospital, a very well known research and teaching psychiatric institution affiliated with Harvard University medical school and Massachusetts General Hospital.

Shortly after being committed to Mclean, my doctor, without telling me anything about the treatment I was to receive, forcibly subjected me to more than 50 subcoma insulin shock treatments, plus one coma shock. Insulin shock was also given in Canada up until the 1960s or mid-1970s, and it was the so-called treatment of choice for schizophrenia in North America and Europe for more than 25 years. It has no proven medical value. That is one reason it has been discontinued in most psychiatric institutions today, but it is not legally banned.

I was lucky. I had the subcoma insulin shocks. Many people I know had the coma shocks. Can you imagine deliberately putting someone into a coma and calling it a treatment? This is what is going on in psychiatry. This is only one example. I survived this torture. I distinctly remember asking my doctor, "Why are you torturing me?" He said, "It is not torture." I could get no information from him. Of course, who the hell knew you had a right to see your chart in 1951, 1952 and 1953?

5 p.m.

I had no right to refuse this treatment, just as psychiatric inmates have no absolute right to refuse any treatment today. I was finally released in 1953, but it was not until about 12 years ago that I finally discovered my official diagnosis. I always suspected I had been called schizophrenic, but there it was in print. They called it "acute undifferentiated schizophrenia" on the basis of very flimsy evidence.

I never got my medical records, although I specifically asked for them. I got a three- or four-page discharge summary. Most psychiatric inmates cannot get even a summary. I believe I was never mentally ill or schizophrenic by the psychiatrists' standards or anybody else's. I was just an angry young guy who happened to be rebelling against my parents' values and lifestyle, and for that reason I was labelled schizophrenic and subjected to the horror of insulin shock.



I am also cofounder of On Our Own, a self-help group of psychiatric inmates and ex-inmates in Toronto. I am with a magazine called Phoenix Rising and with the Ontario Coalition to Stop Electroshock. I am one of the cofounders of all these groups. I have consistently spoken out in favour of inmates' rights for the past 10 to 15 years.

At this moment, no Canadian has the legal right to see, copy or retain any part of his or her medical or psychiatric records. If we are involved in a lawsuit such as medical malpractice or if we appear at a regional review board--there are five of these review boards in Ontario--to challenge our involuntary committal, treatment or incompetence, we just might see part of our records, but do not count on it. This right is discretionary. It should be absolute but it is not.

The denial of access to our medical or psychiatric records, in my opinion, is one of the most serious injustices in Canada today. The same goes for the United States where the vast majority of states do not allow people to see their own records as a matter of right.

This injustice in Ontario prompted the Krever Royal Commission on the Confidentiality of Health Records in Ontario report, which most of you know. In Mr. Justice Krever's report on patient confidentiality in 1978, his main recommendation was that all of us should have the right to see our own medical records. That was eight years ago. Since that time, the Ontario government has not moved an inch. It has consistently refused to recognize, much less enshrine what I consider a very fundamental human or civil right in law. It has refused to enshrine this right in law.

Why should a person have the right to see his or her own records? For many good reasons. In 1978, Professor David Coburn, who at that time was assistant professor in sociology at the University of Toronto--I believe he may be a full professor now--presented a brief to the Krever commission on behalf of the Patient's Rights Association, now called Patients' Rights Organization. In it, he simply ticked off a number of basic points on why people should be able to have access to their medical records. There you see them in the brief in front of you.

Extremely important is the necessity to correct false information about yourself in the medical or psychiatric record. Believe me, if those records were available to some of us who would like to see them, such as myself, we would find a number of libellous and slanderous statements that would be open to challenge.

Professor David Coburn also pointed to the need to make informed decisions about your health care. How the hell are you going to make informed decisions about what is good for you if you cannot check to see what the doctors and other health professionals think or have written about you?

One other point is to check on the adequacy of the quality of care you have received. I assure you the so-called "quality of care" in psychiatric wards is far below the standard any of us have a right to expect, even in a general hospital. It is shocking. For a number of years, I have been calling in various quarters for a full public investigation into psychiatric treatment in this province. It has been consistently refused by the Ontario government. The Toronto Star had four editorials calling for this government to investigate all psychiatric institutions. We will find just how high the quality carries.

Most of us, including people here, want to have the right to know, want to be able to get full information about their condition while hospitalized. Why should we not have that, even the painful truth while we are dying? There have been studies of cancer patients who say, "Yes, I want to know what treatment you are giving me and why; then I die." You should have that right. You also have the right to say "no" to that.

Unrestricted access to one's own medical records is crucial for those of us who have been in psychiatric wards and who are still there. It is common knowledge that the so-called clinical judgement of psychiatrists has been scientifically proved to be unreliable. There are numerous references to a psychiatrists' judgement of our condition--such as it is--being way off base, mainly because it is subjective. When the psychiatrist calls you schizophrenic or manic-depressive, he is not relying on the scientific data that most scientists would have or most doctors have when they make a diagnosis of cancer. Psychiatric clinical judgement is not at all in the same league as medical judgement.

Psychiatric diagnoses are inherently unscientific, mystifying, stigmatizing, and invalidating. I know what I am talking about. They still have not removed my diagnosis of schizophrenia from my medical chart, I am sure, in over 25 years. I have had jobs in Ontario; I have taught psychology. I am sure that if the government of Massachusetts were to allow me to see my record, it would still say "schizophrenic." Never mind that I am doing all of these things that most "normal" people do; it is still on my record and I cannot see it. I cannot correct it.

In psychiatry, the most damning diagnosis or label is schizophrenia. It is equivalent to "leprosy" in medicine or "Jew" in Nazi Germany. It is the same negative connotation.

In over 75 years of psychiatric research, schizophrenia has never been proved to be a bona fide disease; it does not even meet the most fundamental tests of medical diagnosis. That is clearly shown and yet the Clarke Institute of Psychiatry keeps churning out the diagnosis of schizophrenia, calling people that and writing it on the chart. Most people find it out only by happenstance because they do not like to tell you to your face that you are schizophrenic.

I should also add that mental illness, though it is a popular myth, has never been proved to exist as a disease. This may shock some people, but there it is. It has never stood the test of science. It is not a disease like diabetes. First, how the hell can the mind be diseased? Only the bodily tissue, the organs themselves, can be diseased. However, that does not stop the psychiatrists from blithely going on labelling people, writing on their charts and saying, "You cannot challenge it," because you do not have access to their lies or half-truths.

5:10 p.m.

At the time that I was hospitalized, I had no right to correct or challenge my diagnosis because the psychiatrist never told me my diagnosis, never allowed me to see my records or charts. No psychiatrist ever told me, nor most patients in Ontario who have been called psychiatric patients, what their rights were; nobody. We have psychiatric patient advocates now, which is a step in the right direction, but psychiatrists feel that if you know your rights it interferes with their great treatment.



I sure as hell would like to have seen my record. Why did the doctor order the insulin shocks? I can tell you, they terrorized me. I was a mouthy kid when I went in there. That shut me up fast because I was terrorized. That is one of the hidden agendas and objectives of a lot of psychiatric treatment. I went into a coma. I wonder if that is on my chart. I wonder if my protest against insulin shocks is on my chart? I protested loudly because I did not want it, but that did not matter. I do not know because I do not have access.

It is the same situation in Canada today, whatever the province or territory. I am talking about a massive and traditional psychiatric power play, one in which the psychiatrists use their awesome legal power to deny any psychiatric inmate, their "patient", the right to see his own records, what they and other health professionals have written about them. Of course, the psychiatrists rationalize this: "We know best. What are you worried about, dear? It is okay and besides, if you see your record, it will only make you more disturbed or upset. We know best, right? We always know what is best for you, right?"

I am sick and tired, as you should be, of this damn patronizing attitude on the part of psychiatrists or any other doctor. Do not tell me what is best for me. Do not let a doctor tell you what is best for you. Psychiatrists think they can read our minds, so they have carte blanche authority to do that.

What really disturbs me and many of us who have been through the psychiatric mill is this patronizing attitude, the lies and deceit, not to mention the many brain-damaging procedures that have permanently disabled us. I am talking about the powerful mind-disabling neuraleptic drugs, the anti-depressants which have been propagandized as safe, and electro-shock and psycho surgery which are still going on in Canada. That is what really upsets us, because when we are through with that, we are not the same.

Psychiatry has more power than any other branch of medicine. We gave the psychiatrists the power, that is why they have it, but we can take it away. Denying psychiatric inmates access to their own records is just one more game the psychiatrists are still winning and laughing about. I say it is damn time for this province and any other province to start seriously challenging psychiatric power and injustice parading under the guise of treatment or therapy.

Mine is a human rights argument. I am not a lawyer, but I know quite a bit about the Mental Health Act, about civil rights and human rights under the United Nations International Bill of Human Rights. There are two fundamental rights at stake in regard to access to medical records: the right to self-knowledge and the right to control your own life.

Milton, the great poet, once said that knowledge is power. That is what the psychiatrists are afraid of. They do not want us to know because when we know a good part of what they know, then we have power. They do not want or like that. It is this power--the knowledge about yourself, about your body, your mind, your life--that the medical and psychiatric establishment has always threatened and attacked with when you bring up the rights of patients or inmates. You and I both know that every human being on this earth has or should have the absolute right to information about his own body, his mind, his life and his soul.

Why should we allow psychiatrists to continue to have the right to decide what is in our own best interest, as we are doing in Ontario and any other province? I know what is in my own best interest, as you know what is in

your own best interest. Nobody else does. Psychiatrists have arrogated to themselves the power to tell us what is in our own best interest, and we have allowed them to do it. Why should they have the power to decide what I can and cannot see on my chart while I am an inmate or psychiatric patient; or what you can see and cannot see?

It is very strange. In Ontario, we all have the right to go to see the information on our credit status and on our credit ratings. We can go and say: "Hey, that is not right and I can prove it. Change it." It will be done. This is on our credit ratings; but when we are talking about medical records, on, no, we cannot go in and change them; we cannot even see or retain a copy of what people have said about our own health and our own personality. Perhaps the government of Ontario is saying financial status is more important than health status. It seems to be.

Bill 34 has to be changed. I am sure you have heard that from other groups, but I just want to focus on a couple of things. You may have heard about section 20, and I know other people will be coming before this committee with a few beefs about section 20, so I will express mine. There is no guarantee that this person in Ontario is going to be able to see his own medical records; it is not in there. You just cannot find it. Section 20 says, "A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual."

Who is going to decide what is going to threaten my health or safety? The way we are going now, we can still give the power to the psychiatrists because they are priests in our society.

What criteria of health or safety will be used by these great, omniscient health professionals to decide whether they can refuse you or me the right to see our records? Bill 34 is totally silent, and it should not be. As long as it is silent, it supports the unreliable clinical judgement and power of the psychiatrist.

Section 20 should be amended to enshrine a person's right to unrestricted access to his own or her own medical records. The first of two recommendations is "that every person has the right...." I should have changed that to read the "unrestricted" right. That is my mistake. I said every person has the right.

Mr. Newnan: What number is that?

5:20 p.m.

Mr. Weitz: That is recommendation 1 on page 5:

"That every person has the unrestricted right to see, copy and/or retain any part(s) of his/her medical or psychiatric records upon written request to the administrator of any health care facility in Ontario where these records are filed; and this request can be made at any time and it must be granted within twenty-four (24) hours upon receipt of the request."

Whether that is practical I do not know, but I think it is important enough that you should not have to wait more than 24 hours to be able to see your records. That is assuming the government of Ontario and this committee recommend that we can see our records.



I have a beef about the definition of "institution" in section 2 of the bill. It is not broad enough; it is too narrow. The way the word "institution" is defined in the act, it leaves out general hospitals, community psychiatric hospitals such as the Clarke Institute of Psychiatry, which sure as hell should be included in there, and private psychiatric hospitals, such as Homewood Sanitarium in Guelph.

To be fair, the definition should be broader to include all health care facilities in the province. My recommendation 2 is: "that section 2 in Bill 34 be amended by adding a separate clause (c) to read, 'any general hospital, community psychiatric hospital or private psychiatric hospital.'"

I am by no means alone in demanding this right. I am demanding this right for all people in Ontario. I hope that eventually everybody in Canada will get this right to see his or her own medical or psychiatric records. I am proud that the group with which I am associated, On Our Own, drafted in 1982 the first bill of rights for psychiatric inmates in Canada. One of the rights we emphasized specifically was the unrestricted right to see, copy and retain one's own psychiatric or medical records. I have attached a copy of our bill of rights in the brief as appendix A.

Last year, the Advocacy Resource Centre for the Handicapped (ARCH)--I represent On Our Own on its board--wrote a memorandum to the Attorney General in which it strongly advocated unrestricted access to one's medical records. Here is a small quote from ARCH of August 26, 1985. It was referring to the fact that the inmates in federally run psychiatric hospitals in the United States can see whatever is in their clinical records. "We recommend that a similar approach be adopted in Ontario, that subsections 29(7) and (8) of the Mental Health Act be repealed and that section 20 of the Freedom of Information and Protection of Privacy Act be withdrawn or rewritten so as to make it clear that it is not intended to be used to prevent psychiatric patients from reviewing their records."

A few months ago, when I was here on behalf of On Our Own to present our brief about Bill 7, we made these statements. "Canadians treated by physicians inside or outside hospitals should have the unrestricted right to see, copy and retain any part of their medical records. In the case of psychiatric inmates, we personally are aware of many serious omissions, inaccuracies and false, if not, libellous statements which psychiatrists, other physicians, nurses and/or attendants have written or claim to have written about us on our charts. For our own personal information and for the purpose of evidence needed by lawyers representing us and other Canadians in court, we demand this right."

On our Own had recommended that section 29 of the Mental Health Act and section 20 of the Freedom of Information and Protection of Privacy Act be amended to include the right of the person to unrestricted access to any part of his or her psychiatric records, and that it should not be possible to appeal this right.

We do not have much of a track record in Canada, I have to tell you, on behalf of the rights of the medical patients or psychiatric inmates. It is a very poor, dismal record. I must compliment the Ontario government, though, for finally passing legislation after many years that gives the right to vote to psychiatric inmates in all municipal and provincial elections. The feds have fallen far behind Ontario because the Canada Elections Act still forbids people who are in psychiatric institutions from voting in federal elections.

If this government can enshrine the right to vote to all its citizens, no matter what institution they are in and no matter what emotional condition they are in, why can it not do the same for the right of access to see one's medical record, wherever it may be? It does not seem to be a lot to ask. I am not asking because I do not like to ask for rights. I believe I am correct in demanding the right because it is a human right. I will close by asking, whose life is it anyway? That is all I have to say.

Ms. Gigantes: We may need some help from our ministry staff. I would like to thank you for your presentation.

Let us look at section 20 and the recommendation you have referred to, Mr. Weitz, from the Advocacy Resource Centre for the Handicapped; that is, that we rewrite section 20 to make it clear that it is not intended to be used to prevent psychiatric patients from reviewing their records. As I understand, section 20 can be read two ways. It is in the freedom of information part of the bill. Presumably, it could be looked upon as part of the privacy protection element that would prevent somebody else from disclosing Mr. Weitz's medical records to a third party.

In a clause of this nature where we are talking about freedom of information and one's personal right to information held on file by government agencies about oneself, we do not make it clear in the legislation that there may be a difference in the way we want to approach Mr. Weitz's concern about learning about his own personal files. I agree totally with him.

I cannot think of or imagine such a case and I have never experienced such a case. I have met all types of people in all types of moods and with all types of behaviour patterns in my 43 years, but I cannot think of one case where it would cause serious harm for a person to find out what was on his record. It might make the person angry, and so it would be to the benefit of the person who had written the record not to have the record disclosed. The anger might upset the person who learned the information. However, to say it would constitute serious harm is quite another matter.

Mr. Weitz: Which is what the psychiatrists are saying.

Ms. Gigantes: I cannot understand why we confuse these two notions time and again in legislation so that something that looks like it is good, because it will protect me from having a third party find out about my personal records, can also be construed and double-used to prevent me from finding out what is on my records. Why is the bill written this way?

Mr. McCann: I am not sure I agree that the bill is written that way. It is true that section 25 is cross-referenced in section 45. Section 45 sets out the grounds on which personal information may be refused, even to the person to whom it relates. It is true that section 20 is one of the sections mentioned there. I do not think the Attorney General would be adverse to an amendment which would clarify the fact that section 20 is not to be used as grounds on which to refuse access to the individual. It is primarily aimed at the protection of the third party.

5:30 p.m.

Ms. Gigantes: All right. Let us put that aside and look at section 45, because it is really section 45 on which Mr. Weitz would like to focus. Section 45 gives the head the right to refuse to disclose personal information to the person.



Mr. McCann: That is right. Section 45 sets out the grounds on which the head may refuse to disclose personal information to the individual to whom that personal information relates.

Mr. Weitz: That is the point.

Ms. Gigantes: There is a much lower test in section 45 than there is in section 20.

Mr. McCann: That is right.

Ms. Gigantes: Section 20 allows the head to refuse disclosure if it seriously threatens my safety or health. In section 45, however, the grounds which identify the reasons a head can refuse to disclose to me my own records simply say that it might prejudice my mental or physical health.

Mr. McCann: That is right.

Ms. Gigantes: What prejudices my mental health and who decides that?

Mr. McCann: I am not equipped to engage in a debate on it, except to say that the recommendation is taken from the Commission on Freedom of Information and Individual Privacy. I do not have it in front of me at the moment.

Ms. Gigantes: Yes. I remember feeling annoyed about it there too.

Mr. McCann: We can extract the relevant material from the Williams commission.

Ms. Gigantes: Williams is not the Sermon on the Mount. This is one area we are going to have to look at. I hope you will mark this for our attention when we deal with sections 20 and 45. First of all, we must look at the different tests involved and, secondly, deal with the very principle of the question which gets raised here.

I have gone through this silly kind of situation myself, having been a client of a health clinic over a number of years. I was once asked a question by a nurse who had my file in her hand. I said: "I cannot remember when that happened. Let me look at the file." She just about had a stroke. "You cannot look at that," she said. It was my file.

Mr. Weitz: Did she give a reason for refusing you?

Ms. Gigantes: No. I started to laugh hysterically. She probably put that on the file.

Mr. Weitz: She is right. "Here is a symptom of hysterical--you know."

Ms. Gigantes: You are raising a whole bunch of issues about how we treat mental illness as well as the question of records. If you did open up information in the way you are suggesting for people to review their own records, it would create a difference in the kind of treatment accorded people in psychiatry.

Mr. Weitz: It should start to create a difference.

Mr. Chairman: Any other questions? Thank you very much.

Mr. Weitz: Thank you very much. Do you have a copy? I hope I was not too long.

Mr. Chairman: No, that was fine.

The next witnesses are from the Ontario Institute for Studies in Education. This is exhibit 77A, which you have. Ted Humphreys is an associate professor and Laura Weintraub is a senior research officer.

In case you have not been to one of these things before, we are rather informal. We give you an opportunity to make any points you want. You may make reference to the written brief that has been circulated to the committee. Then we would appreciate an opportunity to ask you a few questions before you leave.

#### ONTARIO INSTITUTE FOR STUDIES IN EDUCATION

Dr. Humphreys: We appreciate this opportunity to come and make a presentation on Bill 34. Our particular interest stems from research we have done with respect to the Ontario student record and our interest in educational records and information. I will make some brief comments, and Ms. Weintraub will comment on other aspects of our brief. We have a submission which you now have. It will be more complete than what we are going to say here today.

First, it is important for us to make the committee aware of the significance of the Ontario student record as a document in which information of a personal nature is held for considerable periods of time. It is virtually universal. Every child in an Ontario school has a file which is retained. It is retained for the full length of time that child is in school. If one considers that a family may have two or three children, you can conceivably see that there would be a family record spanning over a period of about 20 years. Those records are retained in the school after the student has left for a period and then they are slowly purged and certain information is removed from them.

The information that gets into those files is significant in that it is quite intrusive of private life, dealing with the relations of the student and his family and the relations of the students with other students and with other people. Therefore, it could have, if it were improperly employed, significant effects upon his whole life and the way he operates. It is not only an academic record. That is the key that everyone must recognize. Not only that, but it is particularly intrusive for those students who have any kind of significant problem. The record accumulates over a period of time. It has a wide variety of test materials in it. It has a lot of professional opinion in it. As the student runs into difficulties with respect to his education, that accumulates at a much more rapid rate. That is why we think it is an important consideration of your committee.

My particular role here is to deal with a number of definitional issues. May I first of all refer you to section 1, in which you talk about personal information under the control of an institution? We are making the assumption here that when you talk about an institution, you are talking about an institution of the sort that might be a board of education. It might be a secondary school or it might be an elementary school.

Ms. Gigantes: Not covered by the bill?



Dr. Humpreys: It is not covered by the bill. We have not been able to see that this was not covered. I guess that is significant from that perspective. It does indicate that other acts apply to it and therefore we assumed that those kinds of institutions would be what you are talking about. A lot of our discussion has to do with that perception.

We think that section 2(a), (b), (c) and part of (d), (e), (f), (g) and (h) lack differentiation with respect to that, if we are talking about the educational information here which is defined under personal information. We wonder whether that has sufficient clarity with respect to those particular clauses.

We find that most of the information that is mentioned in those particular sections is included in student records. However, the student record may also contain legal or quasi-legal information--information that arises from counselling sessions and it may arise from social work sessions. As you know, the Education Act does have certain mandatory legal requirements on it which ties that in from that perspective.

We have a query with respect to clause 2(a), the term "record." We wonder whether other documentary material would include such things as school reports, achievement records, legal documents, tests and assessments and that whole set of information.

We assume that the comment about nonexistence of records might also apply to that elusive paper that we find in educational systems when someone tries to find a record and the records are nonexistent up until some point when you force people actually to put them on the table and provide them to us.

5:40 p.m.

The next point I want to make refers to section 10 and the term "person." In our research, we found significant problems in defining "person" in that the age of a student is significant. When does a child become a person with respect to the information in those files? Is it a preschooler? Is an elementary school child able to examine the records? Are teenagers able to? They ought to be able to, at least at that age, because they have the ability to make decisions about their future. If they cannot have access to information contained about them, one has to wonder on what level we are asking students to make decisions.

The issue has also been raised by Krever in his report about the age at which individuals are permitted to sign documents with respect to medical procedures. The age of majority is not the age at which that begins. We wonder at what point. We were not able to resolve this point, although we recommended in our report, which you have, at what stage we thought access to these records should be made available.

We also wanted to raise the question of head in sections 31, 32, 33 and 34. Who is the head when talking about the educational sector? That reverts to the issue of what the institution is. Are we talking about schools or boards? If we are talking about schools, would the commissioner wish to have access to reports from all the secondary schools and elementary schools across the province filed with them? Would these be composite reports that would be brought together at a board level and then filed from that perspective? That raises a significant logistics question.

The next point I want to make relates to subsection 37(2) and the reference to accuracy and what we would call timeliness and which you refer to as being up to date. This is not sufficiently broad in that it neglects pertinence of information and the completeness of information. There needs to be consideration of whether information in those records should properly be held if it is not pertinent to purposes of that record, or if it does not convey an adequate picture of the actual characteristics of the particular person.

Therefore, we refer you to our model outlined in legal aspects, which talks about pertinence, completeness, accuracy and timeliness as the four factors one must consider when looking at the issue of quality of information.

There is also a question in section 37(4) about ways in which information removed from the record might be disposed of. We hope we can jog your memory to the situation where medical records were spread across the city of Toronto from the back of a garbage truck. There needs to be more significant ways to deal with that.

Finally, I want to talk a little about clause 39(1)(e), in which, for law enforcement purposes, the head may disclose information from the record. The pertinent issue is that if I were asked by a parent whether he should disclose information to the school system, and this were in the act, I would have to say that a prudent parent would probably decline to provide information to the school system in view of the fact that at some later point he would not know whether that information would be used for a very different purpose than that for which it was provided.

We believe that if information is provided for educational purposes, that should be its sole purpose. Law enforcement notwithstanding, if it is to be used for that purpose, a third party should be brought in through subpoena, etc., to make a judgement as to whether disclosure is in the public interest.

Continuing with that, there have been significant statements in the United States, when they were looking at their information laws, with respect to whether administrative purposes of information should be entertained when you collect information for other than administrative purposes. Section 39 needs to be examined carefully in its entirety to determine whether you wish to have information provided for one purpose, then used for administrative purposes. Would you like to take it from here?

Ms. Weintraub: Perhaps I can start with a question: Were educational records excluded from this bill purposely or inadvertently?

Ms. Gigantes: Records held by the ministry will be covered, but if you look at the definition of "institution" in part I, section 2, it means either a ministry or such other body as designated in the regulations. We have been given a list of those by the ministry, and you should get a copy of that.

Mr. Chairman: The bottom line would be that we really cannot tell you that until such time as the committee has concluded its deliberations on the bill, gone through all its definitions, and perhaps expanded its scope or changed the nature of what the minister--for example, the minister has already made some proposed amendments known to the committee; there may be others.

We cannot tell you at this time whether, for example, school records come under the scope of this bill. We will not be able to tell until we finish clause-by-clause.



Mr. Treleaven: Excuse me, Mr. Chairman. The minister brings a bill to us. The ministry must have something in its head when it drafts a bill.

Mr. Chairman: Yes.

Mr. Treleaven: It simply cannot bring a blank piece of paper and say that it is up to some committee to dream up what it is. The ministry officials must know whether the Ontario student record cards are involved.

Mr. Chairman: They would not know the intention of the ministry. The reality is that, in this committee, a vote will take place. We cannot tell you the outcome of that vote.

Mr. Treleaven: But this witness is in front of us, asking a question which is very much in my mind. We have representatives of the Attorney General (Mr. Scott) with us, and although this witness cannot demand an answer--

Mr. Chairman: We gave her the answer that in the presentation of the ministry so far, the ministry has held that the individual school records would not come under the bill. I am trying to forewarn them that there may be amendments put during the course of clause-by-clause which will change the nature of that.

5:50 p.m.

Ms. Weintraub: Thank you. At the outset of my presentation, I would like to emphasize that we are very concerned about the legislative silence with regard to children, specifically with regard to children's records. In essence, our primary request to this committee is that there be a reconsideration of the exclusion of children's educational records from Bill 34.

Dr. Humphreys has referred to our overall conceptualization of information management, one that is included in the documented legal aspects of educational information. He has also emphasized the overarching nature of the purpose of the educational record.

I would like, then, first, to re-emphasize our concern with the silence of Bill 34 with regard to the educational record. I would also like to suggest not only that the education sector be explicitly included in the legislation but also that the proposed act's impact on the education sector be considered.

Second, I would like to state that we proceed from several assumptions:

(1) We fully support the intent of Bill 34;

(2) Educators have a serious obligation to collect information about pupils, but also an equally serious obligation to protect that information, so the provision and protection of information must be equally balanced. In essence, we are asking that this committee consider offering further legislative safeguards both to educators and to the children for whom they are responsible.

(3) Essentially, we would like to see these dual obligations integrated into Bill 34, especially given the extensiveness, indeed, the universality of the school record.

While we recognize that section 60 of Bill 34 provides a mechanism for

aligning the bill with such legislation as Ontario's Education Act, we urge that explicit recognition be granted to Ontario's educators, children and their families.

If I may take the liberty of offering an impressionistic overview of the research projects we have undertaken recently regarding information management in the education sector, I should state few boards in this province have anything resembling an information management system. The Education Act and its regulations provide a legal framework for the Ontario student record. Some boards comply in some ways; others, perhaps many, comply in few ways.

Reasons for noncompliance with the information management aspects of the Education Act are many and some of them are even well reasoned. None the less, in our research we did encounter several troubling findings. One is precisely this refusal to comply. A second related finding is the universality, not only of the school record, but also of the remarkable proliferation of student records that exist apart from the OSR and which are not indexed to the sole lawful record and, in fact, are not indexed anywhere.

These files may not exist by law. They are not acknowledged with respect to parent or pupil access. The nonexistent records have been the subject of informal and formal disputes between boards and parents, especially with regard to the critical special education decisions. These files are, indeed, pervasive, unregulated, absolutely common and never acknowledged outside the circle of education professionals.

In part this stems from the deep-seated belief in the expertness and authority of the professional, not just within the education sector; one that reflects a pervasive paternalism. However, it is also a result of educators' fears of litigation--fears that if they record truthfully their opinions and judgements they will be subject to court claims by angry parents.

We have argued in other reports that educators have an obligation to collect and maintain records that are representative of informational integrity, records that are accurate, up to date, pertinent and complete. We argue that educators who maintain such records are not in legal jeopardy. To the contrary, educators who fail to do so may be subject to complaint.

With reference to the unregulated proliferation of files we, therefore, see two implications in Bill 34.

One, that indexing and related requirements will, thankfully, require boards to develop an information management system--a crucial requirement in our opinion, not only to ensure appropriate educational decision making but also to protect privacy and access rights.

Two, we also argue that compliance must be feasible. While we are arguing that the education sector ought to be considered within the framework of Bill 34, we also argue that perhaps some aspects of the wording of Bill 34 will make compliance to the education sector extremely difficult. Even given the current nightmarish proliferation of information regarding school children in this province, one that we argue must be curtailed, we also argue that the curtailment must be feasible. We are afraid that Bill 34 may exchange the current nightmare of unregulated information, for chronic nightmare on the part of educational administrators.

It is quite late and the report we have submitted to you is long. The brief we have passed on today is shorter, but also detailed. Rather than



touching upon specific sections, I will simply suggest that we discuss the proliferation issue with reference to clause 27(1)(b) and with reference to clause 43(1)(b), and request that Bill 34 lend its weight to the curtailment of unregulated proliferation.

On the other hand, we suggest that the bill assist in the feasibility of compliance, particularly with reference to subsection 25(2) and with reference to the data bank sections, sections 40 and 41. These examples are discussed quite fully in the brief.

We have included commentary in our written submission about issues beyond these two issues. These include cautions that boards not be inadvertently forced to reveal sensitive quasi-judicial proceedings, such as with reference to identification and placement review committees and special education tribunals, but also with regard to other items that we sometimes forget go on in school boards, such as suspensions, expulsions, attendance hearings and so forth.

We have concerns about information management and disposal expungement requirements. The education sector is not fully aware of it yet, but it will no doubt run into trouble with the information management aspects and requirements of the federal Young Offenders Act. We have suggested at several points in our brief that we trust the federal law and what is proposed in Bill 34 are consonant and both applicable to educators.

We make a request that the bill do more than name dilemmas. For example, we find that there is in subsection 17(2) a very nice definition of the problem, but the naming of the problem is not the solution. We are somewhat puzzled by the lack of further guidelines.

We are concerned there is not a careful enough acknowledgement of solicitor-client privilege. We are concerned there is not an adequate definition of informed consent. We make reference to our support for the fact the bill speaks to the provision of copies, not only to access to records but also to copies of the records. Very silly disputes have gone on between boards and parents with regard to that issue.

The boards sometimes have concerns that if parents or students are given access to original records, destruction or tampering will occur; for example, tampering with the official transcript. We suggest any institution or agency be permitted to have a witness present if a person wishes to see an original document. If the agency is concerned about tampering, it should be permitted to supervise that access.

Dr. Humphreys has referred to means of destruction. We also have a concern that principles of destruction are not as fully articulated as they might be. The two examples in our submission relate to federal difficulties, one with respect to destruction of war criminals' records and one to the possible destruction of records or lack of access to federal records regarding Canada's alleged co-operation with American Central Intelligence Agency psychiatric experimentation.

While we realize it is impossible for legislation to prevent pernicious destruction of files, we suggest that principles around destruction could be set forth more clearly. We also suggest that some sections of Bill 34 provoke an unwarranted conflict with components of education law that we feel are worthy of protection.

6 p.m.

We do apologize for not having had the written brief that speaks directly to Bill 34 to you earlier. It was simply not feasible for us to get it to you earlier. In closing, I would like to state, first, that we are not speaking on behalf of the Ministry of Education, nor on behalf of the Ontario Institute for Studies in Education, although they have generously supported our research. I would like to make that clear.

Second, we very strongly support the principles inherent, implied and explicit in the proposed act, but we urge that section 60 not stand as the only way in which we can provide protections to Ontario's school children, their families and their educators.

Mr. Warner: I realize that we have exhausted the time. You raised a lot of extremely good points and I want you to clear up one for me.

I was of the understanding that parents now have the legal right to view the student records of their children and that is under the Education Act. Is that not sufficient protection?

Ms. Weintraub: We do point out in our brief that we were delighted to see the wording in Bill 34 that your definition of "record" included those records that do not exist. There are many records in education that do not exist.

Mr. Warner: Right.

Ms. Weintraub: It is very difficult for parents to gain access to records that do not exist. Sometimes we have a very thin, tidy and slim Ontario student record. Whether your question is addressed to whether Bill 34 should speak to that or whether amendments to the Education Act should speak to that--is that what you are asking for commentary on?

Mr. Warner: I am trying to get a sense, first, of the dimension of the problem and second, of how necessary it is. I do not have any problems philosophically in including what you are looking for in Bill 34, because it is access to information. We can do it but I guess it really does not change the world a lot in that records are now available to parents. At the time that change came about, I was teaching and it was great because within a matter of a short period of time, all the subjective stuff disappeared.

Ms. Weintraub: Into other files.

Mr. Warner: I am not aware of that. I certainly was not party to that. When I looked at a file as an educator, I looked at objective stuff; I was not looking at useless material which was simply someone's subjective opinion about a child.

Ms. Weintraub: Unsubstantiated.

Mr. Warner: Unsubstantiated and certainly subjective opinions. What I now looked at was test results, and so on, which was objective material. That, then, became useful material. Similarly, when parents came for an interview, I simply showed them the file of the reading scores and whatever other testing was done, and so on. That was all very useful and I always made it a practice of showing the file to the parent anyway, before the thing had been changed. I figured it was the parent's right to see those records on behalf of the child.



What happens in the real world if we take what is now in the Education Act and put it into freedom of information?

Mr. Humphreys: It may be that nothing whatsoever is changed, I suppose. It is basically an emphasis that we are looking for here. If I might refer to your comments, I am reluctant to accept that because you have nonobjective opinion, it is not valuable material. We hope that a substantial amount of material in the Ontario student record would be subjective, professional opinion based upon experience and based upon a sound analysis of experience with that particular student.

The problem, in part, is not a legislative problem as much as an administrative problem. There are many people who do not take acts and legislation seriously and therefore do not feel it is their obligation to ensure that which is written is enforced. That is part of the problem.

Mr. Warner: Are there still boards of education in this province that deny access to files to parents?

Ms. Weintraub: As a result of the research we did across the province, the right of access to files is in my opinion one of the best kept secrets around.

Mr. Warner: My God. At what age do you think a child should be able to see records on his or her own?

Dr. Humphreys: This is a difficult problem. Our solution was that we felt elementary school students, and this is partly determined by the structure of the educational system in Ontario, would probably best not be permitted open access to their own files, certainly not without their parents' knowledge and approval. Between elementary school graduation and probably grade 10 graduation, there was a joint expectation that either of them, parent or student, could have access, but that they both had to agree to it.

We do not see any justification for students beyond the age of 15 or 16 not being permitted ready access to their own files. We wonder whether the present Education Act is adequate with respect to that because it can be interpreted to exclude students up to the age of 18. It is interpreted in that way by one major board. Most boards take it the other way and say that both the parents and the students have access.

Mr. Warner: Do you agree that with any person attending elementary or secondary school, regardless of age, there should be indication of the parents' knowledge that the individual is going to see the files?

Dr. Humphreys: I agree with that at the elementary school age; I am not at all certain I agree with it at the secondary school age. In this society, we accept people of 15, 16 and 17 years of age having a significant role in the decisions made with their lives. As long as we do that in society, I hardly think it is justifiable to say that they cannot see their own records in a school situation.

Mr. Warner: You did not touch on teacher personnel records. Is that of concern to you as well?

Dr. Humphreys: Yes, it is, but we do not have an adequate research base to feel we can make sensible and realistic suggestions there. The basic principles apply whether it is the one or the other and many of the things we

have talked about refer to that as well, but we are a little less willing to make recommendations with respect to that than we are with student records.

Mr. Treleaven: Grade 9 and 10 students are being asked nowadays to make career decisions and to take streams, courses, etc. Should their records not be open to them at the same age at which they are asked to make career decisions that should be based on academic propensities, abilities, etc.? Should the two not go together?

Dr. Humphreys: Yes.

Mr. Treleaven: What files do not exist now?

Dr. Humphreys: What we refer to in our reports as "professional files" do not exist; that is, it is very difficult to get anyone to acknowledge that he maintains a record for his personal, professional use. This may be a record that has a considerable amount of information. For instance, it may contain disciplinary information and may be held by the principal of the school, but because it is not indexed or required to be indexed in the Ontario student record, it is held, presumably, for that person's own use. However, decisions are made on it. We have found that to be an objectionable practice and we would like to see those records noted and indexed. We are quite prepared to have the professional have them, but we want them indexed because we want the parent at least to be able to question what is in those files.

Mr. Treleaven: What about tests on the kids by special education teachers? Are they ones that disappear, or ones that go to psychometrists and so on?

Ms. Weintraub: Yes, they do.

6:10 p.m.

Dr. Humphreys: Yes, I think so. Any that a professional tends to feel it is preferable the parent not have access to tend to--

Ms. Weintraub: It is right from the point of where the Education Act requires that all children be scrutinized for the early identification program. In the medium to large boards, before a child enters first day of kindergarten and goes through that screening, there will be nine files opened on that child. That is before day one.

Mr. Chairman: Ms. Gigantes, do you have a quick question you want to ask?

Ms. Gigantes: Yes, I have a quick question. Who has access to school records now? Is it only the family?

Dr. Humphreys: The principal, supervisory officers, the parent, and the child depending how it is interpreted.

Ms. Gigantes: What about matters with a view to law enforcement? Is it permitted or who has it?

Dr. Humphreys: That is really the issue.



Ms. Gigantes: Who has it now?

Dr. Humphreys: Legally, these are for the purpose of the supervisory officers, principals, teachers in the school and the parents, and that is it, period. Anything else would require a subpoena. In reality, that is not the situation. I have seen situations where after a serious event in a secondary school, the police walked into the school and said, "We want the records of everyone connected with this event," and they walked out of the school within 15 minutes with an armload. In my view, that is inappropriate, but that is the reality.

Mr. Warner: It is a violation of the charter.

Dr. Humphreys: Yes, but the charter was not here then, so we cannot lean on that with respect to this.

Mr. Treleaven: That is a worrisome problem.

Mr. Chairman: I seek the direction of the committee. We do not have a quorum. I am reluctant to proceed without a quorum. We have asked two people to report to the committee on simultaneous translation and I want to apologize to them for the fact that we do not have a quorum. I intend to notify the party whips that attendance has been less than spectacular. There are four items of business left to transact this afternoon and I seek your direction. What do you want to do?

Mr. Treleaven: What are the four items of business? I know the budget is one, which can be deferred.

Mr. Chairman: We have to schedule or deal with in some way the appointments in the public sector report. We have to make some determinations about how long, oh Lord, these public hearings will go on. We have the matter of simultaneous translation.

Mr. Warner: I have always been reluctant to hold a meeting without at least one person from each caucus. I do not think that is a proper way to proceed, although we have the responsibility to be here. I think we need a separate meeting to deal with this. I feel, as do you, embarrassed that the good people who have prepared the excellent report on simultaneous translation, which I read and thought was excellent, cannot now be heard and we cannot deal with it. We need a separate time. I understand we have not received permission from the House to sit on Thursday morning. Am I correct?

Mr. Chairman: Or at any other time.

Mr. Warner: Or at any other time.

Mr. Treleaven: Mr. Speaker--Chairman--

Mr. Chairman: Yes, my son.

Mr. Treleaven: You have said we do not have a quorum. Since you recognized in Hansard that we do not have a quorum, we cannot officially do anything. Therefore, I suggest we tell Hansard to go home and perhaps these two gentlemen will have something to share with us unofficially--some pieces of paper or a little information--that we can take away until we have a Liberal here.

Mr. Warner: We already have their report.

Ms. Gigantes: We have their brief.

Mr. Warner: I suggest that the chairman send a little note to the whip of the Liberal caucus indicating that we could not proceed because there was no member from the Liberal caucus in attendance. I think that would be in order.

Mr. Treleaven: No, because there is nothing in the standing orders that technically requires a member from each party.

Mr. Warner: I realize that.

Mr. Chairman: I will notify each of the whips.

Ms. Gigantes: You do not have to notify ours. We are all here.

Mr. Warner: We have been here all afternoon.

Mr. Treleaven: That is a matter of opinion.

Mr. Warner: Two of us are here. We are all here.

Mr. Chairman: The committee stands adjourned. Thank you for attending this afternoon. You are free to go.

The committee adjourned at 6:15 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY  
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT  
WEDNESDAY, MAY 21, 1986





LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, May 21, 1986

The committee met at 3:54 p.m. in room 228.

FREEDOM OF INFORMATION AND  
PROTECTION OF PRIVACY ACT, 1986  
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: Before we begin the proceedings this afternoon, we have a couple of procedural matters that perhaps we can deal with.

Members have had a budget proposal for the committee for about a week now. I am wondering if you have had time to peruse it. I will put it to you this way. If it does not require a whole lot of debate, perhaps we can deal with that item now. If you want to debate it, we would have to set it over. What is your pleasure?

Mr. Bossy: I believe we have had it for some time. I have reviewed it and I am willing to make a motion that we approve the budget for the committee.

Mr. Chairman: We have a motion to approve the budget. Are there any comments? Those in favour of the motion? Any opposed?

Motion agreed to.

Mr. Chairman: The second item of business this afternoon is the matter of simultaneous translation. Michael Applin is here. You have had a staff report on that for a couple of weeks now.

Michael, do you want to make any comments to the committee first?

Mr. Applin: No, Mr. Chairman. If the members of the committee have had a chance to read the report, it would best if I respond to any questions they have.

Mr. Warner: First, thank you very much for the report. I appreciate it. I was quite surprised by the revelation that proper, accurate translation is done in the presence of the individuals rather than from another room by television. I was quite surprised by that.

My reaction to the report was that we should try to accommodate the booth within the precincts of the assembly. I wonder if you had considered placing the translation booth not on the floor level or under the Speaker's gallery, but in the centre of the Speaker's gallery, i.e., above the members, so as to present a less restricted view of all members.

Mr. Applin: We considered several locations for the interpreters' booth, including at either end of the Speaker's gallery or in the centre of

it. The problem with putting it at either end is that it restricts the view of more than 50 per cent of the chamber. Because the interpreters are so far back they cannot see over the edge.

The centre of the Speaker's gallery has been reserved for camera 5 for the television service. As such, there will be an enclosure some two and a half to three feet high covering that central camera, which is focusing on the Speaker, and its servo-mechanism. In addition, we have reserved space in the front of that gallery for those broadcasters who want to retain the privilege of covering the proceedings with their own equipment.

For those two reasons, we ruled out that location for the interpreters' booth.

Mr. Warner: I appreciate your comment because you have studied it. As for the location you are suggesting, it seems to me there are certain members whom the translator will not be able to see.

Mr. Applin: That is true. We raised this with a representative of the translators' association. Mr. Saint-Laurent, who is also employed by the government as a co-ordinator of translation services for the Attorney General, came to Toronto from Ottawa where he is based and walked through the House. We showed him where we were proposing to place the booth. In his view, that was far superior to anything in the federal House. Even though it would not give him line of sight vision of certain members, particularly those with their backs to him, he still felt it was superior to being above the House in the Speaker's gallery, even at the centre of the Speaker's gallery. The addition of perhaps a monitor in that booth would give him facial view of those members whom he was behind.

4 p.m.

The decision I would ask this committee to make is on which side of the House you would prefer to have that booth because it makes a difference to our construction plans, obviously. It makes no difference to us from a technical point of view, but it may make a difference from the point of view of the House in terms of whom the translator or interpreter can see and who most asks questions and needs interpretation.

Mr. Warner: Why did you consider having it in the corner as opposed to being as close as possible to the doorway?

Mr. Applin: We did that primarily for architectural reasons and for access to the booth. You can get into the booth without coming into the House if we put it in the corner. You can get into the booth via the lobbies on either side. Changing interpreters in the middle of shifts is less disruptive to the proceedings of the House if we put them in either corner.

Mr. Warner: Did you consider having one booth on either side of the door?

Mr. Applin: Two booths?

Mr. Warner: Yes.

Mr. Applin: We were under pressure to minimize the loss of seats under those galleries. We would lose 10 seats with one booth and double that



with two. I understand those seats are used quite extensively by members for their guests. When we appeared before your predecessor committee, the members' services committee, concern was expressed about the loss of accommodation there. For that reason, we chose to locate only one booth, but we have not made up our mind; neither do we have any particular view on which side of the House it should be.

Mr. Newman: Which are your cameras?

Mr. Applin: The ones there now?

Mr. Newman: Which are yours? There are other cameras in there too.

Mr. Applin: Ours are the four that sit on the floor of the chamber on either side behind the back row, built on those boxes, and the centre one in the Speaker's gallery. Those five are the television units. The cameras on either side of the centre one in the Speaker's gallery belong to private broadcasters. I understand that since we have been televising the spring session, approximately half those cameras have been removed. Private broadcasters feel our coverage is adequate for their needs. I think there are still four broadcasters who continue to retain a presence there.

Mr. Chairman: In the draft report prepared for the members' services committee, some questions remained to be answered. You are seeking that the committee adopt this draft report and forward it to the House for its consideration and to the Board of Internal Economy for any financial considerations that might be there.

Mr. Applin: That is correct.

Mr. Chairman: Is there any further discussion?

Mr. Warner: I thought you wanted a decision. Does the report not ask for a preference to be stated by the committee?

Mr. Chairman: There are some follow-up questions that have to be answered. I think they are more concerned that they have a report tabled with the House that they could then follow up with. The basic question of providing translation has not been finalized until we table this report.

Mr. Applin: Our construction schedule is tight. If we go with interpretation services, we need a decision on whether they are inside or outside the House, because that makes a fundamental difference to our design of the space in the Amethyst Room.

Mr. Warner: Would it be helpful if this committee offers a suggestion on whether the service should be in or out of the House? Is that not helpful to the process?

Mr. Chairman: I believe the draft report makes provision for it being inside the House.

Mr. Warner: That is the preferred option.

Mr. Chairman: The exact location is not quite worked out yet.

Mr. Applin: We came to the members' services committee with an open mind. When we discussed it at length, we presented both sides of the argument and then agreed to come back with this report. This report and particularly appendix 2, which is a brief from the interpreters' association, strongly lean towards the use of a booth in the House. We are prepared to go with that answer if that is the preference of the committee. Our concern is that a decision one way or the other be made so that we can start to plan for the construction.

Mr. Warner: That is why I think it would be helpful if this committee made a statement accepting the recommendation as brought to us by the consultant.

Mr. Chairman: Very simply, I would be looking for a motion to adopt the draft report.

Mr. Warner: I so move.

Mr. Sterling: Does that mean we are accepting recommendation 3?

Mr. Applin: We do not make a recommendation in the report. We leave it open to the committee to choose.

Mr. Sterling: You are saying that if it is absolutely necessary to accommodate the translation booth in the House, then it is to be done in the members' gallery. Who is to say it is absolutely necessary?

Mr. Applin: I am sorry. I missed the argument.

Mr. Sterling: It says, "If it is absolutely necessary to accommodate the translation booth in the House." Who is to decide if it is absolutely necessary?

Mr. Applin: That is the question we are bringing to this committee. Do you prefer to have the interpretation booth located within the chamber or outside it and require the interpreters to work via remote video?

Mr. Sterling: If it is going to take room in the members' gallery, I would prefer it outside.

Ms. Gigantes: What is the members' gallery? I have never figured that out.

Mr. Sterling: That is underneath the speaker's gallery.

Mr. Chairman: We have a motion to adopt the draft report. Is there any further discussion on it?

Mr. Sterling: Just a minute, Mr. Chairman.

Mr. Chairman: This probably means we would have to come back to the exact location inside or outside and exactly where if it is inside the House on a subsequent date.

I for one would like to take a look around the premises to see where it fits. I have some questions about whether it would be possible to allow the translators to come on the floor of the House as we allow the Hansard operators to do now. I am not sure why that is not possible.



Mr. Applin: Do you mean in open space? The general working accommodation for interpreters is a glassed-in booth, not by their preference, but to cut down on the interference with the proceedings of the conference or the House.

Mr. Chairman: However, there are other ways to do that than building a glassed-in booth. For example, it is fairly common in court procedures to use microphones that are of sufficient quality that they do not interfere with the proceedings. A low voice can be transmitted. I am interested to know why it has to be a glass booth, which has always struck me as a terrible place to work in.

Mr. Applin: The International Association of Conference Interpreters has promulgated the standards for working conditions. Invariably and I think without exception, they call for a glassed-in enclosure, primarily to preserve the sound condition of the conference room. My understanding is that court transcribers use a form of face mask. That is transcription in one language and can be done with a face mask. Interpretation calls for a different skill. From talking to interpreters, my understanding is that face masks do not work for interpretation.

Mr. Bossy: It has been mentioned here in the report, and I fully agree, that 55 per cent of translation is based on body language, what someone perceives a person to be saying. At the same time, the interpreter will also be the person who is being picked up by television, and it must be distinct and clear. It is not necessarily the translation that takes place there.

This will be the sound behind some of the pictures that will be shown on television. I disagree that we should try to muffle the sound or put someone out in the open space. I believe we should have a glass enclosure that is as tight as possible as far as sound is concerned so there is no distraction in the House. I strongly recommend having that in the House, right where the action takes place. The interpreter will do a better job. That is my feeling. I talked to many of them in my four and a half years in Ottawa and I base this on their perception. It is nice to see the person who is speaking when they are trying to translate what they are hearing. It makes it easier too. It is total body language. It is not just a nice little picture on television.

4:10 p.m.

Mr. Sterling: In defence of the position I have taken, when we have television proceedings of the Legislature, if you view it in the lobbies, you can actually see the person more closely. If you want to interpret what he or she is saying by having a closer look at that individual, an interpreter watching television would have an even better view of what was being said.

Mr. Warner: That is not what the interpreter said.

Mr. Sterling: I just do not think we should continue to carve away at the Legislature. Maybe the translation service will not be 100 per cent, but I am willing to accept 95 per cent.

Ms. Gigantes: They are not doing it for you, Norm.

Mr. Sterling: We may be. It depends on whether someone is speaking in French.

Mr. Chairman: We have a draft before us that does not finalize the recommendations on this but leaves it open to subsequent detail of exact location. If it is your pleasure to finalize it and say it should be done outside the House, you can simply move an amendment to the motion that is currently on the floor.

That not being forthcoming, are we ready for the question?

Mr. J. M. Johnson: Mr. Chairman, are you proposing that we accept the report as presented and deal with it later?

Mr. Chairman: The motion is that we accept the draft report that was presented to the standing committee on members' services, and in that report the matter of where the translation booths will be located is not finalized. Therefore, that would come back to the committee as a separate item. It would allow the Board of Internal Economy to strike a budget and begin the process of doing the financing.

Mr. Applin: The Board of Internal Economy has struck a budget for the more expensive of the two options; that money is already in the budget. What we are seeking from this committee is a decision on where we put it.

Mr. Warner: That is what I thought.

Mr. Chairman: So you do not want this draft report that you have presented to members' services to carry.

Mr. Applin: What we were seeking was a decision on which location you preferred.

Mr. Chairman: Let us back this up and do it the simple way. It is going to be either inside the chamber or outside the chamber. Those in favour of putting it inside the chamber, please indicate.

Mr. Warner: Yes. That is what the interpreters wanted.

Mr. Chairman: Those who want it outside the chamber?

Is that clear enough for you?

Mr. Applin: Okay.

Mr. Chairman: It is in the chamber. Now back to the draft report.

Mr. Sterling: Since the government voted, there were three members to two. We will put it on the government side. That is our choice. We are going to put it right over your chair.

Mr. Chairman: How about the main motion on the draft report? The motion is to carry the draft report. Any further discussion on that?

Mr. Applin: May I raise a question, Mr. Chairman? Now that you have chosen to go inside with the booth, does the committee have a preference on which side of the House it will be situated?

Mr. Chairman: You have heard one opinion on that.



I frankly would like to see some other considerations as to how you might accommodate them inside the chamber. I am not convinced the only place is to take seats out of the galleries. It seems to me there are other ways to do it and other ways to provide them with access to the chamber.

Mr. Warner: Remove some of the members.

Mr. Chairman: I would like to see you provide us with a subsequent report on some alternatives.

Mr. Warner: Throw out the Tories. Take them all out.

Mr. Applin: Can we expedite this and have an opportunity to present another report on location inside the chamber at your next meeting?

Mr. Chairman: Yes, that would be fine.

Will the draft report carry? Those in favour? Opposed?

Motion agreed to.

Mr. Chairman: We will see a report next week on alterations.

Today is a fantastic day in the history of Ontario. We have visitors here from the Northwest Territories. A committee of their assembly is visiting us.

For the first time in the history of Ontario, I am told, one of our own committees has decided to come in front of our committee, which shows you that the standing committee on the Ombudsman does not have a lot to do with itself these days.

#### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: We have a delegation from the standing committee on the Ombudsman: Mr. Philip, Mr. Shymko and Mr. Bell.

Mr. Philip: Mr. Hayes is showing the support that committee members have for this report.

Mr. Chairman: Members will have a copy of the report of the standing committee on the Ombudsman attached to their agenda today.

Mr. Philip: John Bell, our legal counsel, is on my right. Mrs. Eleanor Meslin, the executive director of the Ombudsman's office, is on my right--she should be sitting here--and Mr. Shymko.

Mr. Chairman: He is on your left?

Mr. Philip: He is on my left, of all things.

Mr. Chairman: My goodness.

Mr. Philip: Let me say it is not because we do not have enough work to do that we are coming before this committee. Indeed, in a sense, we are making history because, as you have noted, it is the first time a committee of the Legislature has appeared before another committee to express some concerns about some legislation which is before that committee. It is because of our concerns on this bill and because we operate so efficiently as a committee that we are aware of what goes on in the universe that affects ombudsmen and ombudsmen's procedures and were clever enough to see the implications of this bill and express some concerns to you.

I would mention that while I do not have a Liberal member sitting with me, this in no way expresses any lack of concern by the Liberal members on the committee. This is a committee report, not a report of the two members who happen to be sitting in front of you.

Since we made the report and included it in our 13th report in 1985, we note that the Attorney General (Mr. Scott) has proposed some changes in Bill 34 that have some implications for the latter part of our presentation. However, I suggest that since those are not passed, it would be improper for me to address initially anything other than the original bill that you have before you.

Having said that, after I have made the presentation on the initial bill, I would like to make some hypothetical suggestions about the implications of the Attorney General's proposals in case the committee should decide to pass those amendments.

Mr. Chairman: Maybe I can assist you slightly there. The status of the amendments is that they have been tabled with the committee by the Attorney General, and he has clearly indicated he will move those amendments himself. You might expedite matters somewhat if you accepted the proposed amendments as being already on the table, as in reality they are.

Mr. Philip: I accept that they are on the table. I also accept that there will no doubt be a debate in this committee and in the House on those amendments; they have not been passed yet. Out of respect for the democratic rights of the Conservative Party and of the New Democratic Party, which I assume may agree or disagree with the Attorney General's amendments, I suggest respectfully that I stick to my original plan.

"The following is the report of the committee's subcommittee on Bill 34, which has been received and approved." The committee will make submissions to you today on that.

"The committee is of the opinion that it, rather than the standing committee on procedural affairs," or any other committee, for that matter, "should perform the functions that are set out in sections 60 and 61 of Bill 34. The committee holds this opinion because the duties of the Freedom of Information and Privacy Commissioner are similar to the duties of the Ombudsman and because it is the standing committee on the Ombudsman, of all parliamentary committees, that has had experience in the review of such duties.

"There are a substantial number of similarities between the two offices. The office of the commissioner is set up in a manner similar to the Ombudsman's office. Both are appointed by the Legislature and are officers of the Legislature. Both offices respond to the grievance of a citizen and, in so doing, protect that citizen's civil liberties. The Ombudsman concept as a watchdog or protector for the ordinary person is internationally recognized.



It has been described by Dr. Bernard Frank, the former chairman of the International Bar Association's Ombudsman committee, as follows: 'It is the basic purpose of the Ombudsman to protect the human rights of the citizen with respect to complaints against government.'"

4:20 p.m.

I might add that in the home of the first Ombudsman, Sweden, the Ombudsman there sees freedom of information as the area under his jurisdiction that he must handle personally because he considers it the first of all freedoms and rights. While he may delegate his responsibility to other members of his staff, the freedom of information issues are those reviewed by him personally.

"Arthur Maloney, the province's first Ombudsman, has stated that 'The Ombudsman is the functionary to whom the citizen turns when he feels he has been unfairly dealt with by an appointed official of the bureaucracy.' From these descriptions of the Ombudsman function, it seems clear that the commissioner of information and privacy also seeks to protect the human rights of the citizen vis-à-vis the government in the form of an official of the bureaucracy.

"Both offices are also required by their respective acts to conduct independent investigations; the Ombudsman and his staff have extensive experience in this area. Both also attempt to mediate the conflict between the citizen and the bureaucracy, Dr. Hill informally and the commissioner because he is required to do so by his act.

"And both are reviewed by a committee of the House," although, in the case of the standing committee on the Ombudsman, I might add that the committee has the role of mediator among the Ombudsman, the Legislature and bureaucrats. I will deal with that later.

"What is now the standing committee on the Ombudsman was originally constituted as a select committee to oversee the functioning of the province's first Ombudsman. The committee has a history of conducting these reviews in a nonpartisan way. Freedom of information and the protection of individual privacy are also matters which should be reviewed in this way. Moreover, since it is the case that Bill 34 does not provide for an appeal to the courts from a decision of the commissioner"--indeed, it is silent on that--"review by an experienced committee of the Legislature is essential. Similarly, because Bill 34 establishes, under sections 12 to 22, broad exemptions to the right of access, review by an experienced parliamentary committee is all the more important.

"Finally, if the committee's interpretation of subsections 46(1) and (4) of the bill is correct, the committee will, in fact, be dealing with one important aspect of the freedom of information legislation and should, therefore, deal with it totally."

What I am saying is that there are certain sections under the act before you--not the amended act but the present act--that will eventually be reviewed by the Ombudsman himself. Since the Ombudsman's committee has the jurisdiction to deal with those decisions of the Ombudsman in which there is no resolution between the Ombudsman and the bureaucracy, it is redundant to have two committees dealing with it.

"The subsections read as follows:

""(1) ...the exercise of the discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in sections 13, 14, 15, 16, 17, 18, 19, 20 or 22 is not appealable."

""(4) The Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this act."

"Therefore, refusals to disclose under the exemption sections are properly within the Ombudsman's jurisdiction. Complaints which cannot be resolved by the Ombudsman and the governmental organization in question may be referred to the standing committee on the Ombudsman. One parliamentary committee, the standing committee on the Ombudsman, therefore already has a review function in relation to the act" as it was then constituted. "There does not seem to be a need to introduce review by a second committee."

In dealing with the proposed amendments by the Attorney General, let me say that if, under the proposed amendments, there is an appeal procedure and if that appeal procedure is to the commissioner himself, one might ask why there is not the same further appeal to the Ombudsman under this act as is exercised under other quasi-judicial bodies. I refer, for example, to the Ontario Labour Relations Board, where the Ombudsman would clearly have a final jurisdiction in looking at a decision on which the labour relations board had passed judgement. We have had similar cases with other tribunals.

Thus, even with the revisions, one might ask whether it is appropriate for the Ombudsman not to have a final review. I might suggest to you that for the Ombudsman not to have a final review may be contrary to section 15 of the Canadian Charter of Rights, and I suggest you might want to get a legal opinion on that.

The Ombudsman Act and the Ombudsman system in Ontario have worked well. What members of the committee want you to know is that we have a lot of work to do; this is not our attempt to take on the work of another committee. We are suggesting to you that, if you look at the history of what has happened in other jurisdictions across Canada, you see that the success of the Ombudsman system in Ontario may be attributed in part to the committee system we have developed.

Indeed, if you look at what has happened in other jurisdictions, you find that the tabling of the Ombudsman's report in the their Legislatures often means simply that a report is tabled and that the people who have a grievance against the government and for whom the Ombudsman has found in favour still do not get redress.

By developing this committee system, which was suggested by the Honourable William Davis and by the then Ombudsman of Ontario, Arthur Maloney, we have developed a unique, workable system, one that works better than that of any other province in Canada and one that protects the rights of the individual. I suggest that if you accept our proposals, you will be protecting the human rights of the citizens in a way far better than the methods that are proposed under either the bill or the bill as proposed to be revised by the Attorney General.

Maybe Mr. Shynko, Mrs. Meslin or John Bell would like to make some comments.

The Vice-Chairman: Thank you. We would be glad to hear from Mr. Shynko.



Mr. Shynko: I will reiterate in some respect and reinforce the comments that were made by Mr. Philip.

First, it is important to look at some other jurisdictions, both at the provincial level and internationally, that have ombudsmen's offices and institutions that perceive the mandate of the Ombudsman's office as dealing with any legislation that provides for a freedom of information process.

For example, in Canada--in New Brunswick, Newfoundland and Manitoba--it is the Ombudsman's office that is charged with the responsibility of monitoring and processing the freedom of information legislation. Whether there is a legislative act or whether there is some officer charged with that, it is still the Ombudsman's office in those jurisdictions that monitors and reviews the function under the existing freedom of information legislation.

4:30 p.m.

You find this also in other jurisdictions; internationally, I am sure Mr. Bell will give you some examples of that. The commissioner of freedom of information has always been perceived as an Ombudsman. Since there is no ombudsman's office in Ottawa at the federal level, the freedom of information commissioner is attending this year's meeting of the International Bar Association in the capacity of an ombudsman.

The French word for "ombudsman" is "protecteur du citoyen," a protector of what we perceive as fundamental civil liberties that cover the entire spectrum, including the right of access to information and protection of privacy. What we are saying is not something new. We find parallels; we find there is that perception of an ombudsman's office dealing with this area of jurisdiction.

I think you will also see that prior to the establishment of a commissioner for freedom of information, our Ombudsman, in dealing with the operations of ministries and government agencies, has at times been faced with obstacles to getting or being provided with information. The Ombudsman has been called upon to adjudicate, and has been perceived as adjudicating regarding disclosure under the freedom of information legislation in cases he has investigated in the past under the Ombudsman Act.

You may still perceive a situation in the future where our Office of the Ombudsman, in pursuing certain cases, may come upon a circumstance where information is necessary. I do not know whether he will stop at that stage and transfer it to a commissioner. He will most likely pursue it, since his mandate in the 10 years of the functioning of the Ombudsman's office has always provided him with those powers. When that obstacle occurs, when a government agency or ministry refuses to provide information, he has the mandate today to pursue that.

I agree with Mr. Philip. You may be debating whether that amendment should be implemented. Since the amendment was introduced, our strongest argument has been that the Ombudsman was involved in the original draft of the bill before you. In terms of nonappealable cases, the Ombudsman was to be involved.

Notwithstanding the amendment before you, it points out that a link in the Ombudsman's office was established in the perception of those who prepared the first draft of the bill. It was there. Someone had the wisdom to see that there was a relationship between the Ombudsman's office and the commissioner

in terms of nonappealable cases, which would then fall under the Ombudsman Act and where the Ombudsman would have to be involved as the final authority. If that is the case and that perception existed, I am sure it was based on the wise, intelligent assumptions of those who were drafting the bill originally.

You may want to pursue the reasons this amendment was presented. Perhaps the original draft made a lot of sense. We have never questioned the exemption clauses and the involvement of the Ombudsman's office. We simply wanted to say that since there is that relationship and linkage, it makes a great deal of sense not to complicate or duplicate matters by having two committees of the Legislature deal with it. Let us leave it to a committee that has been in operation, in a nonpartisan fashion, for a decade. It has been dealing with what we may define as "civil liberties." I know Mr. Philip defines the Ombudsman as the civil libertarian of the highest office in Ontario.

The perception of linkage is there. I feel we should try to avoid a bureaucratic nightmare that you might see and that I think you would see, two legislative committees dealing with two offices whose mandates and intentions or protecting the civil liberties of our citizens are fundamentally the same. If the linkage is there, why not allow the legislative committee that deals with this area to monitor both the Office of the Ombudsman and the office of the commissioner for freedom of information?

This is where I want to end my remarks with, except to say that we now are at a stage of reviewing the mandate of the office and its operation. We contemplated looking into the area of freedom of information and how that office would expand. There may also be recommendations from the Ombudsman as to how he perceives his office and its expansion of mandate and jurisdiction, and perhaps some recommendations in the area of freedom of information.

Mr. Philip: I will ask our legislative counsel, John Bell, to comment. I will have one or two summary sentences and then perhaps we can have the questions.

The Vice-Chairman: That is fine. Mr. Bell, we will be glad to hear from you.

Mr. Bell: For the record, I have not been elevated to the status of legislative counsel, I am merely counsel to a significant standing committee of this Legislature.

I will not review what my clients have already indicated as their reasons. I share them. However, I can assist you in putting the issues into some perspective as they relate to this committee, the standing committee on the Ombudsman and the office and function of the commissioner under this act. With respect, I think this committee and the House must consider whether the committee process is relevant and necessary to the functioning of this parliamentary commission. I say that rhetorically, because I suggest that it is. One only needs to examine the 10-year experience of the Ombudsman process to see the reasons.

Before the Ombudsman process and the creation of the then select committee on the Ombudsman, there had not been any occasion in the history of this Legislature when a recommendation of a select committee had been adopted by the House. Since the creation of the select committee and that process, there have been numerous such occasions. There were even debates between the committee and the then Attorney General, Roy McMurtry, as to what the status of that adoption was, whether it was a legal obligation or merely a



resolution. The fact remains that this House has taken very seriously the need for the committee process as it relates to the Ombudsman.

The reason is simple. You remove a substantial number of the Ombudsman's teeth if you remove the committee process. It seems to me one of the intentions of this act is not only to create an office that is going to be effective with respect to access to information, but also to be seen to be effective by the public, the constituents whom we presume are intended. I suggest to you from experience that the office and the House will be seen to be much more effective with the committee process.

If you concur with that view, the only remaining question is who should do it, this committee, the standing committee on the administration of justice, any other committee or the Ombudsman committee. I am one of the few people in my profession who has a profound respect for the work load that members of this House undertake. I have been associated with committees since 1973, and I have lived with them on occasion for months. I know the work load you all have to undertake in addition to committee matters.

Frankly, I do not think it is possible. Perhaps that is a bit strong. I think the responsibilities that have been delegated to this committee under the act are extremely onerous because, and please take this on faith, you will have to learn to do things a lot differently in some ways. Those of you who are familiar with the Ombudsman committee process know it is different. In many ways, it is substantially different from the operation of any other committee, and it has to be because of the subject matter of its responsibilities. I suggest that if you agree the committee process is relevant to this commissioner, whatever committee adopts the responsibilities will have to perform in the same way.

4:40 p.m.

You have invested a lot of money in the Ombudsman committee over 10 years, not the least of which has been my legal fees. It is uniquely equipped to deal with issues such as this, and we are merely suggesting and inviting this committee to consider seriously that there is a mechanism of this House already in that can share the work load in, we suggest, a more efficient and cost-saving way.

May I draw your attention to section 54 of the bill and leave you with an observation and a serious submission? Those of you who are familiar with the Ombudsman process will know the phrase "the ultimate sanction of the Ombudsman." Because an Ombudsman does not have the power to force his recommendations to be implemented, he may only recommend and hope that the Legislature will respond in a favourable way. The Ombudsman is so effective in Ontario, I believe, or is as effective as he is, because of his ability to invoke the ultimate sanction through the committee process. That is lacking in this bill.

If you look at clause 54(2)(c), a commissioner may make recommendations "with respect to the practices of particular institutions and with respect to proposed revisions...." The way in which it now is written, those recommendations will sit with the House and nothing will happen unless there is a particular issue that interests or attracts the attention of parties or groups of members such that another process is created. There is not the automatic referral and the automatic involvement of the committee process. That will diminish the role of the commissioner and it will diminish the commissioner's effectiveness, at least in the eyes of the public, and perhaps in real terms.

The Information and Privacy Commissioner would arguably be the third officer of the Legislature who performs very important public duties, the first being the Provincial Auditor and the second being the Ombudsman. Both of the latter have access to committees, the standing committee on public accounts and the standing committee on the Ombudsman. Simply stated, it has been denied the commissioner under this act. Mr. Philip may well have a valid point when he raises the spectre of the charter in section 15. I urge you to seek a legal opinion, perhaps from the research branch of the legislative library in that account.

The Vice-Chairman: Mr. Philip, you said you had a couple of words to wrap up your the comments.

Mr. Philip: John Bell did such an admirable job of summarizing our concerns that I see no need for a further summation.

The Vice-Chairman: I believe Mr. Bossy has a point of order.

Mr. Bossy: Yes. On a point of order, I feel sort of awkward here and sort of in conflict because all three members of the government party are also members of the Ombudsman's committee. This puts us in a difficult--

Ms. Gigantes: Conflict of interest.

Mr. Bossy: Just by coincidence.

Mr. Warner: Which three are on the Ombudsman's committee as well?

Mr. Bossy: All three happen to be on the Ombudsman's committee.

Mr. Treleaven: Plus Mr. Morin.

Mr. Sterling: You do not have to say anything.

Mr. Warner: There is quality on both committees.

Mr. Philip: We are pleased we have members of this committee who have already voted in favour of what we have said.

Mr. Shynko: It highlights the quality of the members, too.

Mr. Bossy: Can all three of us sit on that fence?

Mr. Shynko: Sure, you can.

The Vice-Chairman: Order. I am not so sure that is a point of order.

Mr. Philip: That is only two out of three, though.

The Vice-Chairman: I am not so sure that is a point of order.

Mr. Philip: We are pleased to have you on our committee.

The Vice-Chairman: It is a point of interest that has to do with the work load the members have that Mr. Bell referred to earlier. There are many occasions when members serve on two different committees and have to make decisions in the best way they can.



Mr. Bossy: we are making decisions for both.

The Vice-Chairman: You have to weigh the situation as best you can, Mr. Bossy, and come up with the best answer.

We are already 30 minutes behind schedule. I want to go immediately to the questions. We have Mr. Sterling, Ms. Gigantes and Mr. Bossy.

Mr. Sterling: I find the logic of where you started and where you ended with regard to looking at the Ombudsman quite amusing. When you ended your submission and said that a committee of the Legislature should be involved in the final decision of whether a piece of information should be released, I thought you were going to say, "We prefer Bill 80 over Bill 34," because that is exactly what I introduced back in 1984 and for which I was severely chastised by the New Democratic Party and the Liberal Party.

I was talking about political accountability and not a quasi-judicial or judicial accountability, which is where you are now. You say that as a committee of the Legislature, we should throw the decision of whether a piece of information should be released back into the political forum. That is what you do in the standing committee on the Ombudsman with respect to reviewing a particular case. I thought I had learned a lesson but I guess everybody did not learn the lesson at the same time.

With regard to dealing with the Ombudsman as to whether--

Mr. Philip: May I comment on that or are you making a rhetorical statement?

Mr. Sterling: I thought the idea of Bill 34 was the accepted mode, as I accept it now, although I would rather have political accountability than shove this off to a judge or whatever. The Legislature has made a choice on second reading that it wants a judge to make the final decision on the release of a piece of information.

Mr. Philip: May I respond to that? First, the criticisms of your bill did not deal--I can only answer for myself--with that specific point but with other concerns about the bill. Second, if you read the comments Ms. Gigantes made on behalf of our party at least, we said that while we agreed with the principle of the bill, we were in no way determining how we might vote after we had dealt with the hearings, nor would we preclude any position after the hearings. I suggest you may want to consider some of the issues we bring to your attention.

Mr. Sterling: That is fair ball, but I did not interpret Ms. Gigantes as saying she wanted the decision as to whether a piece of information should be released in the political forum as opposed to a quasi-judicial or judicial forum.

Mr. Philip: Ms. Gigantes suggested there were several concerns with the bill and spelled out some of them.

Mr. Sterling: Yes.

Mr. Philip: I did not have an opportunity to speak on that because I was in another committee at the time, but she was aware of my concerns and other caucus members may have--

The Vice-Chairman: Maybe Ms. Gigantes can clarify that herself later on.

Mr. Sterling: May I go on with regard to my concern about the Ombudsman? It is a valid question whether the Ombudsman should be the Information and Privacy Commissioner. The role of the Information and Privacy Commissioner under Bill 34 is very different from the role of the information and privacy commissioner under the federal freedom of information act. Under this bill, he has a final say on whether a document should be released. He has the role of judge, so to speak. He takes a request and asks somebody else to do the investigation. It comes back to him and he makes the final order. Under the original bill, the appeal from that decision was very limited.

I think that will be amended as we go through this section by section. Our party believes there should be a direct right to appeal from the information commissioner. I am not sure whether the information commissioner should have just a recommending role anyway; I think that would be preferable. Taking the bill as it is, the Ombudsman has a very different kind of approach in his function from that of the information commissioner under this bill.

4:50 p.m.

Second, we found out from the Information Commissioner of Canada, Inger Hansen and the Privacy Commissioner of Canada, John Grace, that a great part of their duties is educating the public of Canada to the use of those two pieces of legislation. I am not sure whether by putting it in the Ombudsman's corner we would be blurring that responsibility so that they would not be able to undertake that educational role to the degree necessary for the public of Ontario to get to know the act.

Mr. Philip: May we deal with those two points first?

Mr. Sterling: Sure.

Mr. Philip: With regard to the first point, Bill 34 is completely silent on what happens if a government public servant decides to tell the commissioner to go fly a kite. There is absolutely nothing in this bill that says a person has the right either to go to court or to go to the Legislature. The bill is completely silent on it.

Mr. Sterling: Did you say a public servant?

Mr. Philip: Yes. If a public servant says the freedom of information commissioner is wrong and he does not intend to release this information, then the bill is absolutely silent on what happens at that point. It may well be that someone with enough money can take it to the Supreme Court, or some such thing, but the bill is silent on that.

In Ontario, we have developed a system that works better than any other system in Canada. In those jurisdictions where the ombudsman cannot go to a committee that adjudicates and acts as a facilitator between the government civil servant on one side and the ombudsman on the other, the only recourse the ombudsman has, in frustration, is to go to the press, the media. That has polarized situations and resulted in systems that I think do not work as well as the system we have developed in Ontario.

On your second point concerning the education of the public, one of the problems the federal government has had--and you will notice our brief does



not say the Ombudsman should also be the information commissioner. That may be the opinion of some members of the Legislature, but it is not in the brief.

Having said that, one of the problems in the federal government is that no one knows where to go when he has a grievance with the government because there is no overall office or ombudsman to deal with it. In jurisdictions around the world that have created a series of ombudsmen, different committees and difference processes, they have confused the public. I suggest that if you have one committee, one system and one process that deals with such a grievance, it will be much easier to educate the public than setting up a whole new series of systems, as you are trying to do in the bill.

If you think the public is confused now, think how confused it will be in those instances where there is both an information component and also some other human rights components in the dispute between the citizen and the government.

What happens? Does the Ombudsman then say: "I am going to divide off this section and send it to the information commissioner. We will wait another two years until he makes his decision so I can get this document, proceed and then pass judgement on this case." If you want to create a bureaucratic nightmare, you will go the route this bill goes. If you want to confuse the public, then you go that way.

The Vice-Chairman: In no way do I want to take away from the fine debate we are having, but I want to point out to the members of the committee that we have four more groups on the list. I am in the hands of the committee and I am really not interested in cutting anyone off, but I will ask you to judge for yourselves how long we should take with each presentation.

Mr. Philip: May I just let Mr. Bell add something quickly? I think those are important issues.

The Vice-Chairman: I just want to make my point. I am in the hands of the committee and am not interested in cutting anyone off. I am getting the message that I should be speeding things along. I do not want to be in a position where I have to cut off any members.

Mr. J. M. Johnson: On a point of order, Mr. Chairman: I would like to suggest courteously to the other witnesses that are here that we have four groups. Can we not ask Mr. Philip and Mr. Shymko to come back another day or at least to wait until other witnesses make their presentations? We are running three quarters of an hour behind now.

The Vice-Chairman: Mr. Johnson, I am in the hands of the committee. I think we should try to finish the debate with Mr. Shymko, Mr. Philip and Mr. Bell if possible.

Mr. Treleaven: I agree with Mr. Johnson in that Mr. Sterling has probably not done his questioning of the witnesses. Ms. Gigantes wishes to go, and I heard somebody else. You are suggesting that if we finish up with Mr. Philip, we go ahead until 5:30. That is discourteous to the people who are waiting, especially when these are members who can come back another day.

Mr. Philip: We would be pleased to come back another day. We feel so strongly about this that all three parties on that committee would be happy to answer all of the questions of the members. I would ask, though, that Mr. Bell be given a minute to address the very important issues that Mr. Sterling has raised.

The Vice-Chairman: We should do one of two things: either we should conclude our remarks with these witnesses--and we will be glad to reschedule them, it is the wish of the committee--or we should continue. I do not think we can keep on going another couple of comments and another couple of comments. We either make a decision or we do not. If it is agreeable to the majority of the members of the committee, I want to thank Mr. Philip, Mr. Shymko and Mr. Bell. We can assure them we will reschedule them as soon as possible. Thank you for the informed debate.

Mr. Philip: You got me out of House duty, and this is a lot more exciting place than in the Legislature.

The Vice-Chairman: We have the Ontario Hospital Association to make a presentation to the committee.

I would ask that the witnesses before the committee please identify themselves by name and by position. I also want to remind the witnesses and the members of the committee that we are now 45 minutes behind schedule. I ask you please to act accordingly.

#### ONTARIO HOSPITAL ASSOCIATION

Mr. Hiscock: Thank you, Mr. Chairman. My name is Bob Hiscock. I am chairman of the board of the Ontario Hospital Association. I have with me Roger Slute, general manager of professional relations and direct services; Hilary Short, director of public affairs; and Carolyn Shushelski, director of legislative services. Ms. Shushelski is a registered nurse in addition to being our counsellor at law, so she is amply qualified in this area.

Ms. Gigantes: Can I ask what number this is?

The Vice-Chairman: It is Exhibit 85. Please proceed.

Mr. Hiscock: Thank you. I appreciate it. I hope to ease your concern about the time, Mr. Chairman. I appreciate the opportunity. Originally, I intended to minimize our time because the OHA did not intend to come before this committee. We felt the public hospitals of Ontario were not included and we recognize that they are still not included within the scope of this bill.

It came to our attention, however, that there might be persons who thought hospitals should be. There is the omnibus section 60 at the end of the bill, which suggested to us that in certain circumstances, by regulation, hospitals could come under the aegis of the bill and that then this section 60 would trigger coverage.

On that basis, we submitted a written brief on April 3 and received your request for more information. You have our presentation, which I think you will find is short. Frankly, I intend to shorten it by not reading it to you. I am sure you are more capable of reading briefs.

Our short case is simply this. Public hospitals are primarily governed, as is our public trustee board, by the Public Hospitals Act and the Corporations Act. We feel very strongly that if the public need is best served by more freedom of information from hospital records, then that should be achieved through the Public Hospitals Act rather than through this legislation.



5 p.m.

I do not think it is necessary to emphasize what the OHA is, other than to make the point that we are a voluntary association of 350 hospitals and allied institutions. We are not a governing body. We are not a regulatory body. We provide representation and direct services to assist our hospitals to attain the best standards of patient care within, as we always say, the available fiscal resources. Although funded primarily by the Ministry of Health, we are not government institutions.

You have our presentation; that is the short case. We would not be here if we did not wish to give you as representatives of the public the opportunity to decide whether our concern about the efficacy of the Public Hospitals Act is well placed.

The Vice-Chairman: Basically, if I understand your brief today, you are not included and you do not wish to be included.

Mr. Hiscock: Precisely, Mr. Chairman--

The Vice-Chairman: That is the long and the short of it.

Mr. Hiscock: --and to present ourselves so you can satisfy yourselves that our reasons are valid.

The Vice-Chairman: I see. Thank you, Bob. Do you mind if I call you Bob?

Mr. Hiscock: Please do, sir.

Mr. Warner: I am very curious. What types of things should the public not have access to in the hospitals?

Mr. Hiscock: The primary thing is medical records. They are grist for the mill of any hospital. Patients who are exposed to treatment in a hospital inevitably have to give up their privacy in the ways we all recognize if we have been in a hospital. Their own identification, their medical history and many other areas are exposed and recorded. Those records become inexplicably tied in to the hospital's records. Therefore, the limitations on records within a hospital are set forth currently in the Public Hospitals Act.

Mr. Warner: I recognize that I should not be able to obtain the health records of some other person, but you are saying that I should not be able to obtain my own health records.

Mr. Hiscock: No, I am not suggesting that. I am suggesting that access to health records and to hospital records should be handled within the Public Hospitals Act rather than in a freedom of information act. It is currently so.

Mr. Warner: Why the distinction?

Mr. Hiscock: Primarily, if it is within the Public Hospitals Act, then it takes into consideration the peculiar circumstances. I suppose everybody who appears before you thinks their circumstances are unique. However, I think hospitals probably are in the sense that no citizen is quite so vulnerable, nor is his privacy quite so vulnerable, as when in hospital.

The responsibility of the hospital is to patient care, which inevitably involves dealing with the medical history and health history of the patient. That gets into hospital records; it must.

Mr. Warner: Right. I do not want to debate it, but I find it very stupid. We have public hospitals in Ontario now, as opposed to 50 years ago. There are publicly elected boards. Are you suggesting that the public in the community should not have the opportunity to know what is discussed at board meetings?

Mr. Hiscock: No, sir.

Mr. Warner: How can I as a citizen, without the backup of a freedom of information act, obtain information about the meetings which are held?

Mr. Hiscock: Every hospital has an annual meeting which we are required to and do publicize. The public is free to attend the annual meeting, at which point there is a report made and the board has to justify its stewardship, both from a financial and a care point of view. Some hospitals have open board meetings and some do not. That tends to be at the discretion of the particular board. The Public Hospitals Act is silent on that particular matter.

Mr. Warner: Wow! Did you say there are public hospitals which do not have open board meetings in this province?

Mr. Hiscock: Yes.

Mr. Warner: You are kidding.

Mr. Hiscock: No.

Mr. Newman: That is only for discussion of personal matters. Is that it?

Mr. Hiscock: Not necessarily.

Mr. Warner: That is absolutely astounding. You spoke of the annual general meeting.

Mr. Hiscock: Yes.

Mr. Warner: Okay, I am aware of that. I assume that, aside from the annual general meeting, there is a succession of regular meetings, whether monthly or--

Mr. Hiscock: Hospital boards must meet 10 times a year, I believe, under the act. I am subject to being corrected.

Mr. Warner: How do I as a citizen obtain the information on what business transpired at those 10 meetings?

Mr. Hiscock: Under the Corporations Act.

Ms. Shusnelski: Hospitals are corporations without share capital. There is a provision in the Corporations Act that provides for the information to be available. Specifically, it is section 305. It is for certain persons who would need the information. I think it says the shareholders, members and



creditors. There are persons who, under the Corporations Act, are entitled to the minutes of the meetings.

Mr. Warner: I am a shareholder because I am a citizen of Ontario.

Mr. Hiscock: No.

Ms. Shushelski: No.

Mr. Warner: If I am not a member, I cannot obtain copies of the minutes of these meetings, although my dollars built the hospital.

Mr. Hiscock: That is correct.

Mr. Warner: I see. I certainly appreciate your presentation this afternoon. You have helped to make up my mind.

Mr. Hiscock: I hope you are making up your mind for the right motives.

Mr. Warner: Yes. I will be honest with you, I am really astounded that in 1986 public hospitals would hold closed, secret meetings. We went through this kind of battle about town councils a number of years ago. I come from an area where our town council used to hold secret meetings and make all sorts of interesting decisions behind closed doors. The public never had a little peek at what was going on. I naturally assumed public hospitals did not function that way, but you are telling me at least some hospitals in Ontario do. I am appalled by that, frankly.

Ms. Shushelski: I understand what you are saying. However, this has to be looked at in a complete context. We are taking the board minutes here and looking at them specifically. What we have to do is look at how the public could be affected if hospitals were under Bill 34.

I briefly went through and reviewed some sections. Hospitals have been regulated by the Public Hospitals Act and the Mental Health Act. We must not forget there are 69 hospitals that have psychiatric facilities. You cannot have all kinds of bills governing different parts of a facility. The Corporations Act also governs hospitals.

I look at Bill 34 and I see specific instances that can cause trouble. For instance, there is a section--I think it is subsection 36(1)--that talks about personal information. That means everything, not just from whom you can get personal information about an individual. I could read it out exactly, but I understand it to mean that when a patient comes into a hospital unconscious, what am I to do? Can I not ask you as the friend or neighbour, or anybody else, what happened to this individual?

We have to look at the whole context of what is going on here. We have an act, the Public Hospitals Act; it works. We have had it for many years; it works. If we need changes, we can do it through that mechanism.

Mr. Warner: My only response is that what we are viewing is freedom of information balanced with the right to privacy and within that context the opportunity for people legitimately and properly to obtain information which is in the public domain. I think that is the nature of our exercise. That is the goal.

5:10 p.m.

At this point, I am unpersuaded that public hospitals should be automatically excluded. I am still curious about why they should be excluded, notwithstanding certain provisions for privacy, which I understand. I should not be prying into someone else's health records, and I acknowledge that; nor should anyone else be prying into someone else's health records. However, I should have access to my own health records and should have an idea of what the local hospital board is contemplating with respect to the operation of the hospital within my community, such as where it intends to expand and what kind of services it intends to curtail or expand.

Ms. Shushelski: Your fear should be alleviated because there is a section under the Public Hospitals Act that provides for patient access to the record. The mechanisms are there and in use.

The Vice-Chairman: May I ask a question? I am not familiar with the Public Hospitals Act, but how does a patient gain access to his or her own file?

Ms. Shushelski: They have to consent to it. I do not have the act in front of me but section 49 provides a mechanism whereby a patient may get his record. Whoever he wants to have the record writes to that director to review.

The Vice-Chairman: I just call the administrator?

Ms. Shushelski: You would not call. It has to be a written consent.

The Vice-Chairman: If I sent a letter saying I was interested in my record at a particular hospital, I would be able to receive the entire record?

Ms. Shushelski: You would have to put it in writing. It is done all the time. Lawyers do it for personal injury accidents. It is the first thing he does. He reviews the case with the client and says, "Here is the general authorization I will send off to the hospital; would you please sign it?" When I was in private practice, it was not a problem. You sign it, send it off and get the information.

Mr. Slute: My name is Slute, Mr. Chairman. It is important to recall the amount of time, effort and resources that went into the Royal Commission on the Confidentiality of Health Records in Ontario. The chairman, Mr. Justice Krever, made 170 recommendations to the government five or six years ago in a three-volume report. It is a very important component and it is through that mechanism the answers to Mr. Warner's questions should be filtered.

It is not easy for a patient to get a copy of his medical record, leaf through it and for him to say: "I understand this. I do not understand that." The Ontario Hospital Association and the Ontario Medical Association have produced a statement as to how a hospital should deal with a request by a patient to see and know the contents of his medical record. Doctors' writing and the words they use are not generally very good. We have recommended a method for the patient to sit with the physician in the hospital, by appointment, and find out what the diagnosis, test results are and so on. It is not easy for the patient to write a letter saying: "I was a patient in your hospital, please send me my medical record. Here is \$50 or whatever it costs to make a copy of it." It is not very simple and all the players in the game in the hospital have some interest too.



The Krever report and his recommendations about the Public Hospitals Act is important. We presented a brief, appeared and so on. That is one of the reasons public hospitals should not be under this kind of act because the Public Hospitals Act, as Mr. Hiscock has said, is the vehicle for 4,000 hospital trustees who are responsible for those hospitals and managing their affairs. The government does not manage the affairs. The government provides 90 per cent of the funding for operating expenses and maybe 50 per cent for capital expenses. It is not in the same ball game at all.

The other point I wish to establish is that the Corporations Act specifies that the board of directors is responsible for the affairs of the corporation. It is the same as any other corporation whether it is International Business Machines or anybody else selling goods and services to the public. The people of Ontario devised a system of paying for hospital care. They have not devised a system for paying for all the computers and everything we use, but the board of directors, how it functions, the committees it must have and the committee structure in the hospital are very different from any other kind of corporation you have. There have to be review committees and so on for how the doctors did this or the nurses did that. It is another ball game for hospitals only. That is part of the uniqueness on which we base our argument.

Ms. Gigantes: I am rather fascinated by the presentation, particularly when I turn to page 3 and the second last paragraph of section 2. You are dealing here with the patient care review process. Every concerned body that comes before us, and which might be subject to this bill, talks about precisely this process.

Ontario Hydro said very much the same kinds of things you are saying to us: "We cannot operate our corporation if you are going to insist that the public have access to our internal communications, where colleagues review the adequacy of the work being done in this section or that section. We just cannot operate that way."

Ontario Hydro board meetings are not open to the public as a matter of course, and over time, that kind of pattern of the operation of public institutions has generated the political and public demand for freedom of information. We are at a stage now in Ontario where it is well-recognized that the public has the right to more information, and more right to information, than we would have thought necessary 20 years ago.

You are probably correct in your identification of a key concern. That is the same concern we meet in other institutions. Frankly, I am in agreement that such records should be opened up. It seems to me that the provisions in the bill for exemptions from disclosure are so wide that they make we wonder whether the bill is going to be of much use to the public in Ontario.

Ms. Short: We, as hospital associations, realize that we have opened ourselves up to a certain degree of risk in appearing before this committee. We recognize the public pressure. The climate is changing and hospitals are in a difficult position. As it now stands, we could have let sleeping dogs lie and not brought this out for discussion at all.

Ms. Gigantes: I think you are most wise.

Ms. Short: The question of keeping the proceedings of patient care review confidential within the hospital is a very difficult one to describe--or defend, in fact--but it is simply the way things are at present.

Hospitals are deeply concerned over the quality of patient care. We really must put quality assurance programs in place and expand all aspects of patient care review. That is very difficult without the full and active participation of all health professionals, and it is a very real and serious disincentive for them to participate because it is a human problem. There is no way around that.

Ms. Gigantes: We all understand that. What we are dealing with here is a recognition that there is a basic human impulse to secrecy in operations. Take a New Democratic Party government, for example, or any other government, and give it the chance to run things without people knowing how it is happening. They are going to do it. We all operate like that. It is just part of our nature, part of the way human beings operate together.

5:20 p.m.

This bill says that there are certain limits we want to see now legally structured into the operations. On the other side, when you talk about the protection of personal privacy and medical records, I would think that you would look upon this bill as not just freedom of information. This bill is also protection of individual privacy. It is a major component of the bill. In view of your concerns about the personal privacy of health matters of patients, I would think you would feel reassured knowing that this kind of legislation is not only going to be there to back you up, but is going to be there through a lot of other systems that operate in this society.

I suggest to you that the amendments proposed by the minister at this stage, if you turn to part III--I do not know if you have the bill printed with the amendments included. On page 25, looking at section 36, for example, we suggested to the minister, and I would like to suggest to the government, that your institutions be included in the coverage of this bill. Clause 36(1)(g) would permit the collection of what statistics, or information from patients, hospital operations might require. There are hospitals which will be covered by this bill; there are provincial hospitals. Correct? Some hospitals in Ontario will be operating under this bill.

Ms. Snort: Psychiatric facilities, which do not operate with a community base.

Ms. Gigantes: Yes. I do not see why we should assume that some can and some cannot. I assume that all can. It is a question of a political decision about which you include in and which you include out. I personally would like to see the coverage of this bill widely extended to municipal governments, to hospitals, to school boards and so on.

The Vice-Chairman: We have each made our case and we each understand where we are coming from, Ms. Gigantes and members of the hospital association. Do you mind if we go to Mr. Sterling?.

Ms. Gigantes: Oh, sure. There was a comment here from the--

The Vice-Chairman: Okay, a brief comment before we go to Mr. Sterling then.

Ms. Shushelski: Previously, public hospitals would be assumed to be part of this act. I have very serious concerns about several sections that really have to be looked at. Not in five minutes, but there are a lot of concerns here and they overlap. There is the one about the unconscious



patient, which you probably have not even considered. You have to look at everything. It is not that easily answered by just saying, "Put us under the bill and give us this exemption." You have to look at it in total.

The Vice-Chairman: I do have to apologize that we are rushed for time today. I wish it was not so. I wish we had more time for thrust and debate back and forth.

Mr. Sterling: As I am somewhat familiar with the Krever report, having read through it and intending to probably specifically deal with that after we have finished with the freedom of information and the privacy issues, I can understand some of the concerns that you are expressing. However, the reason that you are excluded is not because of the issue of whether you should or should not be. In my personal opinion you probably should be one of the first institutions included because you are spending a lot of my taxpayers' dollars. You should be accountable to the public for that. In my view, you are not accountable to the public in an open enough fashion at this time.

I know you have elected boards and that kind of thing, but I know also now those elections take place. They are meant to be done openly but usually it is a group of individuals who are very much concerned about it. I am not knocking those individuals in any way, shape or form, I am just saying it becomes a closed circle and it should be a much more open process.

It is a matter of practicality about how much the information commissioner or the privacy commissioner can deal with when he is implementing this act. It is only a matter of time before the hospitals do come under this legislation. I do not know whether it will be on this first flight or not. It depends on how we deal with it at the committee level. My question is, and I would ask you to write back to the committee, and I will just end at this stage, can you separate the clinical part of a hospital from the administrative part?

Mr. Hiscock: I would have to ask here, how do you define administrative? Let me suggest to you, sir, that one of the principal requirements for accreditation under the Canadian Council on Hospital Accreditation, which as you know is a standard of excellence, is a quality assurance program. Quality assurance is the name for a series of programs, policies and procedures which inevitably involve things such as a clearance screening, which involves reviewing the care that particular patients receive.

I would like to make one point. A lot of people have a feeling that so-called peer review or patient review is something that is only done when something terrible happens to somebody in a hospital. That is not the case. It is a preventive maintenance approach where you review the care that particular patients have had to assure yourself that all the things that were supposed to have been done were done properly. That becomes a review by a committee, Mr. Sterling. I am pointing out to you that it is very difficult to segregate clinical records or medical records from what you might consider to be administrative records, and that would be part of the consideration of a committee on it.

Mr. Slute: That is absolutely true. It would be fair to say that since none of us is perfect, but some of us are more perfect than others, when a hospital has roughly two employees per bed, those employees of all the different stripes and all the work they do in whatever department are subject to this quality assurance process. Since physicians are not usually in a master-and-servant relationship, hire and fire, it is a question of working together, with a lot of people examining each other's processes.

When a mistake is made or something was not done, those things need to be brought out, including an explanation of why they were not and what can we do to make them better. Since no hospital is perfect because it is only the sum of its parts, we think, we feel and we believe that the frank and open discussions of both this quality assurance and how it is recorded and so on are things we would want the public on a daily basis to be able to have access to--the records of the committees.

Mr. Sterling: That argument was given to us by the internal auditors of Ontario Hydro. It is the same argument in terms of what you are dealing with. If this committee decided to include hospitals, but allowed you to exclude anything that would identify a patient for examination, would that be adequate?

Ms. Shushelski: Would that exclude all information that would identify a patient?

Mr. Sterling: Either directly or indirectly.

Ms. Shushelski: Would you exclude all medical records?

Mr. Sterling: Yes.

Ms. Shushelski: The trouble we run into is this--and I know you are referring to Hydro--

Mr. Hiscock: I object to the analogy to Hydro.

Ms. Shushelski: I do too.

Mr. Hiscock: There is a distinct difference between the god-damned balance sheet of Hydro and the lives of patients, so let us not use that analogy.

Mr. Sterling: I was talking about the lives of the employees, because we were talking about how employees perform and whether or not they would be--

Mr. Hiscock: With respect to patients, Mr. Sterling.

Mr. Sterling: Oh, sure. I assumed all along we were not going to reveal anything about any patient. We were talking about how an employee performed in a particular circumstance.

5:30 p.m.

Mr. Shute: If you are asking about the interaction between the employees of whatever profession and the physicians who just cannot be hired and fired when something goes wrong, then yes, that would go a long way in what we are talking about. It would mean the medical records committee, the utilization committee and the medical audit and tissue committee of the medical staff. Those are the kinds of things in that area of care review. Then, of course, nursing, pharmacy and all those other things are brought into that when you look at incident reports and so on.

The Vice-Chairman: One final comment and then we are going to hear from Mr. Newman.



Ms. Short: Would it be the wish of this committee to have the Ontario Hospital Association make some study of the way the kinds of information could be differentiated, and how there could be some practical way that would be acceptable in the interest of the public? We would certainly be willing to look at that and we will submit that to you, but it would take some thought.

The Vice-Chairman: Thank you very much.

Mr. Sterling: I only say, as a matter of warning, that this committee has the power to include you.

The Vice-Chairman: Thank you. Mr. Newman has been waiting patiently.

Mr. Newman: I am just concerned when we talk about the protection of individual privacy. Are we not sometimes actually referring to a denial of information to the next of kin? It is said that doctors quite often bury their mistakes. I am talking from experience.

Mr. Slute: I think a number of things have been changing on that score. The Health Disciplines Board has talked about more open communication between physicians and both the patient and the next of kin. There is a continuous process of identifying those cases by the Health Disciplines Board, an agency which would be listed under the Ministry of the Attorney General. I was in the chief coroner's office this afternoon and post-mortem examination reports are now available through him in coroner's cases.

Mr. Newman: Should that not be automatic, though?

Mr. Slute: Probably.

Mr. Newman: Just to eliminate that comment I made.

Mr. Slute: There are some difficulties. In principle, theory and philosophy, I think they should, but there should be some sort of process of identifying them. For instance, right now if a physician gave me information about a relative of mine who was in hospital, but without that patient's consent, that is professional misconduct. Again, that is part of the process discussed in the Krever report.

Mr. Newman: I accept that, but do you not think the doctor also has an obligation to the next of kin, to level with him and not talk around the subject?

Mr. Slute: Oh, yes.

Mr. Newman: Who sees to it that that is done in the hospital?

Mr. Slute: We are back at the old game of leading a horse to water and forcing him to drink. The physician is not under a legal obligation to spend that much time with the patient's relatives and answer all their questions. That misconduct clause really places him under restraint about divulging information without the patient's consent. It is a problem area.

Ms. Shushelski: May I just add something to that?

The Vice-Chairman: I think we have to move right along.

Ms. Snushelski: I understand what you are saying, but I really have to make this clear.

The Vice-Chairman: Certainly.

Ms. Snushelski: A patient who is competent has the right to be informed by the doctor about the disease process or anything going on with him or her. It is only when a person becomes mentally incompetent that we really start to deal with the relatives about various issues of the disease process. It is a very important concept and one I think we are certainly moving closer to, to make sure we are always dealing with a patient, and not to assume that the patient is incompetent when he or she is not.

It you find there is a difficulty that relatives are not hearing as much as they may want to, we have to look at the whole process of what is going on in hospitals now. Physicians, nurses--everybody is getting it now. "You must talk to the patient." They are doing it. Maybe, in doing that, you feel you are not being--

Mr. Newman: I will talk to you about it.

Ms. Snushelski: Okay.

The Vice-Chairman: Thank you. I want to thank the representatives of the Ontario Hospital Association for being with us this afternoon.

Mr. Hiscock: Thirty seconds, Mr. Chairman. First of all, I apologize for my minor outburst. I am sorry about that.

The Vice-Chairman: That is all right.

Mr. Hiscock: I did not mean to offend you or members of the committee. I just want to restate that we are fully committed to freedom of information, coupled with right of privacy. It is our position that this should best be done under the Public Hospitals Act, wherein our responsibility lies. Thank you.

The Vice-Chairman: The Public Interest Research Centre is the next organization. This is one of three groups that will be appearing before us.

I assume the committee intends to try to adjourn at approximately 6:30 p.m. I ask all members to govern themselves accordingly. We may be able to do so. I do not particularly want to cut anybody off, but we cannot ramble on either.

If we could find out who is here, we would like your name and position and we want to hear what you have to say to the committee.

#### PUBLIC INTEREST RESEARCH CENTRE

Mr. Roman: Mr. Chairman, my name is Andrew Roman and with me is Cathy McLeod of our Toronto office. Elizabeth May, whose name is shown on the exhibit, is working in Ottawa and was unable to be here today.

Given the lateness of the hour, it is not my intention to read or even summarize our brief because you have it and I am sure you can read it for yourselves. It was, however, based on an earlier version of this bill. We received the updated version yesterday containing some good news and some bad



news as far as we are concerned. Therefore, we will address ourselves primarily to the amendments and what has happened since.

One of the concerns expressed in our brief was the large number of sections not appealable to the commissioner. We note with approval that has been changed, so now anything can be appealed to the commissioner. I submit that is a major improvement in the legislation.

Our second point was that all information should be prima facie accessible and a head must justify refusal to disclose certain information. We note that section 49 now puts the burden of proof on the head to show he falls within the exemption. That is also a good and worthwhile amendment.

The other area of concern, which seems to be a public concern based on misinformation, is the lack of a specific appeal to the courts in the act. It is important to note--and those of us who practise in the administrative law field are probably more aware than other lawyers--that an act does not need to say you have a right of appeal to the courts in order to have that right. It exists by virtue of the common law.

One could not, even if one wished under general principles of constitutional law, exclude such a right of appeal. The difficulty, however, is that because the act makes no mention of this, the result may be one law for the rich and one for the poor. Those who have lawyers who know that will know they can go beyond the commissioner; perhaps they can even ignore the commissioner and go straight to the courts. Those who do not know that will go to the commissioner, thinking perhaps that is the end of the road or will go to the commissioner when they should be going to the courts instead.

It may be worth while, as much for public information as to create any legal rights, specifically to mention that an appeal lies to a court on a question of law from a decision of a head or from a decision of the commissioner. I emphasize those terms because we do not want the commissioner making important legal distinctions and decisions in the first instance, if we can help it, then having to appeal to the court, because that slows things down.

One other serious problem we noted, for which there has been no improvement, is the section 27 time period extension, which we think allows someone to extend the time period indefinitely until we all die of old age. I bring to your attention that at least one tribunal in Ottawa, the import tribunal, formerly the antidumping tribunal, has a statutory 90-day period in which it is required to decide.

5:40 p.m.

I know there may be some problems under this act in doing this. I suggest you impose some statutory period. Where it is impossible to decide within that statutory period, the head would be required to make an application to the court to get an extension of time. That would allow a safety valve in circumstances where there is genuine and serious reason for an extension of time. It would also prevent the potential abuse that whenever there is a sensitive bit of information, one simply says the inquiry is too large, there is too much paper involved and we never needed to give it to you, which has been a major abuse at the federal level.

On an administrative matter, we have suggested and still suggest that there might be some benefit in splitting the information commissioner's job

from that of the privacy commissioner, because you want people with perhaps different psychological orientations. You want one who is oriented towards lifting the lid and another who is oriented towards keeping it on. Those may well be different personalities. There may be some advantages in splitting those functions.

We have noted that there are some problems with access charges. There has not been any change in that. Based on the US experience, one of our concerns again is that perhaps the major users will be corporations, because they are the only ones who can afford some of the large bills they are likely to get for access to information. There ought to be some consideration given to the value of information and perhaps to the redistributive effects of some of these charges.

Perhaps the worst piece of bad news is found in section 17. I draw your attention to that because this guts much of the act as it is likely to be applied in practice, particularly clause 17(1)(b), which requires a refusal to dispose a record if it results in similar information no longer being supplied to the institution. If somebody wishes to threaten the head of an institution, what he will do in every case is to send every document stamped "Confidential" and say, "What is more, if you do not honour this confidentiality, we will no longer supply this information to you." If that is the only evidence before the agency head, he might take the position, "If we are not going to get this information, the act says we must refuse to disclose it."

I suggest that whether information is supplied ought to be a matter of government policy. If it is not supplied voluntarily and you still think it is important that it be supplied, there ought to be a legal requirement to supply it. The way this section is drafted, it gives individuals a kind of nudge-nudge, wink-wink game they can play with the bureaucracy whereby the bureaucracy is virtually inviting these people to threaten it and it will respond to the threat by denying the information. A more intelligent way to do it is simply to delete that section. It allows someone to be virtually self-determining in whether or not he disposes.

Also, I find the words "financial" and "labour relations" a bit too broad. Virtually anything with a number with a dollar sign in front of it may be financial. The overall test that is used by a lot of agencies with which I have had experience and which I commend to you is something in addition that may be better than some of the very broad, vague and confusing exemptions, the clear and direct harm test.

There ought to be a weighing exercise to assess the clear and direct harm to the individual as a result of disclosure versus the public interest in disclosure. That is the best kind of balancing test you can do. If you use highly specific verbal tests, which tend to be fairly vague and could possibly and may likely result in the kinds of things where the evidentiary burden is very difficult on both sides, you may wind up with less disclosure than you now have. When in doubt, one ought to pay attention to statutory language. If the objective is more openness, as I take it to be, you do not achieve that by creating what amounts to statutory invitations not to disclose.

There are a lot of other comments I could make, but in view of the lateness of the hour, I suggest the primary piece of bad news is what has been done to section 17. One ought to look at that very closely.

Ms. McLeod: There are two small items I would like to address, both of which are found in section 48. One is dealt with in our brief. The first



one is subsection 48(3), the power of the commissioner to decide whether an inquiry may be conducted in private. This is an enormously broad section. I suggest that guidelines be placed in the act as to when an inquiry may be conducted in private. Mr. Roman referred to the openness of this process; I think this goes against that openness, as Mr. Roman put it, especially when it involves personal records.

That takes us to subsection 48(13), where basically only one person is entitled to be present when making submissions to the commissioner. I would suggest that when somebody is making submissions where he wants access to records concerning somebody else, that somebody else should be entitled to refute any of the submissions made by the person seeking information. That is a basic principle of administrative law, that one is entitled to answer his own charges, and this could be as important as that. Those were the main submissions I wanted to make.

Mr. Chairman: Thank you very much.

Ms. Gigantes: I would like to take you to page 2 of your brief, the second paragraph. You have addressed there section 11, which has generated an enormous amount of resistance from various organizations that have come before us. We have had a great number of suggestions about what to do with section 11, but none to widen it. I would like to hear more about your suggestions.

Mr. Roman: That is a discretionary power; it is not a mandatory power. The head is required, although it uses the word "shall," for all practical purposes to do some kind of balancing exercise. It is very subjective in that it is based on his belief. That is what triggers it. I am not even sure that section, or a decision made under that section, if it were a negative one, would be easily appealable to the commissioner in the sense that the commissioner might say, "If he does not believe that, who am I to say he has to believe that?"

It can be expanded so that it is not confined to grave environmental health or safety or hazard to the public. That is a subset of the cases in which it may be in the public interest to disclose. I have not seen any convincing case that those are the only important circumstances under which it may be important.

Ms. Gigantes: You would suggest rather the substitution of something such as "in the public interest."

Mr. Roman: Perhaps you could end it after, "it is in the public interest to do so."

Ms. Gigantes: We had suggestions made to us that there should be third-party notification in any case where a head decided to disclose under section 11, so that the provider of the information would have the right to come forward and argue why the information should be withheld.

Mr. Roman: If you do not have such a section, it is still a wise procedure to follow. Otherwise, what will happen is, if there is a provider of the information, and there is not in every case, he would probably move for an injunction and probably get one. You may be buying yourself a lawsuit if you do not allow a third-party procedure. On the other hand, I am not sure it has to be in the act.

Ms. Gigantes: How would they know to get an injunction?

Mr. Roman: They might not know; they might find out indirectly or they might find out after the fact and sue. They might move to have the information returned to them. It will take only one case in which a court holds that to disclose information that is a property of another without consulting them is a denial of natural justice and an excess of jurisdiction. When that occurs, it will be governed by the principle of precedent to determine that you cannot do that any more.

Ms. Gigantes: In any cases where you might wish to use section 11, and I do not think there will be that many cases where anybody is going to use section 11, the urgency of the public interest in getting your information may be quite strong. What you are saying to us, in effect, is that this stuff can get tied up in court, no matter what devices you use.

Mr. Roman: On, yes. There is a case called Crevier and several others like it in the Supreme Court of Canada. They say, basically, that unless you are going to create, or unless you have something called a section 96 court, which is a particular type of court of law under the Constitution, no administrative or quasi-judicial body that you set up can be a final determinant of anything that involves a point of law or jurisdiction.

5:50 p.m.

As a result of that, you cannot keep cases out of court if people want to take them there. That is a fundamental problem in our legal system. People can tie you up in court. That is why the better the procedure you set up, whether it is statutory or a matter of discretion, and the more overt fairness there is in the procedure, the greater the likelihood that someone on the other side of such a case can bring a court action throwing out the first one. Sooner or later this is going to be tested in court by someone who does not want to disclose something and that procedure, the way that first case goes, will set it for all the others.

Ms. Gigantes: I am quite interested in this point. I wonder whether you might write us a few more notes about this at your leisure.

Mr. Roman: Yes, we can do that.

Ms. Gigantes: This is going to be a real crack in the effectiveness of this legislation in this area of public interest and the safety and health of the public, as the federal legislation does it, as to how we might go about making provisions as wisely as we can.

Mr. Sterling: Could I just ask--

The Vice-Chairman: Are you going to ask for some different material?

Mr. Sterling: No, it is under section 11. I originally drafted section 11. It is from Bill 80. I included it because it was the only positive section, in terms of not being a reactive statute but being a positive statute, in terms of what the government must produce or put itself in legal jeopardy. If you water it down--if you want to look at it that way--to just what is in the public interest, then are you putting the government in jeopardy for every kind of information that should be produced as public in somebody's opinion. You are taking away the effect of section 11.

Mr. Roman: The fact that you cannot oust judicial review has nothing



to do with section 11. That is true whether or not section 11 is there. The suggestion I made would broaden rather than narrow it.

The Vice-Chairman: You have 60 seconds to wrap up, sir. Is that fair?

Mr. Roman: Yes. I do not think that putting a period after the word "so" dilutes or broadens it; rather it removes a limitation and therefore makes the section more effective.

Mr. Sterling: My concern is that if you widen it so that the scope is enormous, how are you going to get a judge to come down on a government and say, "You should have produced this information"? Therefore, the harm an individual has created has penalized you in some way.

Mr. Roman: The way you have drafted it includes the word "believe" and that is what we refer to as a subjective condition precedent. Courts are most reluctant to interfere with those sorts of things. It is a lot tighter than you may realize.

Mr. Sterling: I realize it is tight. What I am saying is that if you blow it wide open, you make it ineffective.

Mr. Roman: It may make it ineffective for bureaucratic reasons that I do not understand, but if blowing it wide open is what we are really doing, I do not see that affecting in any way how a judge would look at it. Perhaps it might make a difference in the eyes of bureaucrats and ministers, but I cannot see that it would make a difference in the eyes of a court.

The Vice-Chairman: Mr. Roman and Ms. McLeod, thank you very much for appearing before the committee. I apologize again for the lack of time. We found your comments very interesting. I assume you are going to send some written material to Ms. Gigantes. I wonder whether we can have that written material available for all members of the committee and the committee staff.

Ms. McLeod: Surely.

The Vice-Chairman: That way we can share the information, since we are talking about freedom of information.

Ms. McLeod: We will get it to you as quickly as possible.

The Vice-Chairman: We have two organizations left to make representations. The Psychiatric Patient Advocate Office of Ontario will be making a presentation. Just introduce yourself and the position you hold with your organization. We will be more than glad to hear from you and maybe some of the members will have some questions afterwards.

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE OF ONTARIO

Mr. Giuffrida: My name is David Giuffrida and I am legal counsel to the Psychiatric Patient Advocate Office of Ontario. Our program works for the rights of psychiatric inpatients who are in the care of the 10 government-owned and operated provincial psychiatric hospitals across Ontario. There is at least one psychiatric patient advocate in each of these hospitals, reporting to a co-ordinator of our program, Dr. Tyrone Turner.

I want to talk to the committee about the access to clinical files by individual psychiatric patients. I am mindful of the fact that the Attorney

General (Mr. Scott) has recently proposed amendments to Bill 34 that would remove access to psychiatric clinical files in provincial psychiatric hospitals from Bill 34 in contemplation of that access being introduced via Bill 7 into the Mental Health Act. My comments bear that in mind.

You have in front of you the submissions of our program. The majority of those submissions make the case why it is a good thing for patients in general and psychiatric patients in particular to have access to their clinical files. That point does not need belabouring with this committee. Given the original drafting of Bill 34 and given the Attorney General's amendments to Bill 7, which would give access to psychiatric patients to their files, it is generally accepted that access to clinical files is a good thing.

I only draw the committee's attention, if it wants the additional evidence supplied by studies in this jurisdiction and elsewhere, to the provisions of our brief that point to the experience in other jurisdictions when patients have had access to their clinical files. There is much hypothesizing and catastrophizing among the medical profession, or there has been in the past, that if patients were to see their files terrible things would happen. At a minimum it would interfere with their treatment and recovery and they would misunderstand; they would become outraged; they would become upset.

None of that has materialized. It has not become a problem. In fact, wherever access to clinical files has been tried as a pilot project or as a result of statutory changes in that jurisdiction, it has been established that it is at worst a neutral change and at best a positive change, also accepted by the clinical staff as a positive thing.

I want to comment on the mechanism for achieving access to psychiatric records by individual patients. Because the 10 provincial psychiatric hospitals are owned and operated by the government, they constitute institutions for the purpose of the definition of "institution" in Bill 34. Patients in psychiatric wards of public hospitals, as the bill is currently drafted and subject to any changes the committee may make, would be excluded from access to their clinical files. People have noted that this is a somewhat arbitrary division. If you happen to be a patient in a government-run psychiatric hospital, under this bill you would have access to your file. If you were a patient in a psychiatric ward of a public hospital, you would not.

That inconsistency provided the impetus for the removal of access to psychiatric clinical records by the Attorney General's most recent amendments, found in section 59a of the act, and the inclusion of access to psychiatric records in recent amendments by the Attorney General to Bill 7, the omnibus act providing for amendments to various statutes to bring them into compliance with section 15 of the Charter of Rights and Freedoms.

The Mental Health Act governs not only provincial psychiatric hospitals, but also the psychiatric wards of general hospitals. The standing committee on administration of justice now is engaged in clause-by-clause review of Bill 7 and has recently begun to address the specific proposals dealing with the Mental Health Act.

I had hoped the timing would work so I could say to you today, "Never mind, the standing committee on administration of justice has evolved a thoughtful resolution of the Attorney General's amendments and the amendments introduced by Ms. Gigantes of the New Democratic Party and the matter has been adequately dealt with." It is my fond expectation that it will be, ultimately,



but at this juncture that committee has not yet been able to turn its attention to clause-by-clause review of the Attorney General's amendments or to those proposed by the NDP.

Further, I have concerns about the way access is provided to psychiatric records by the Attorney General's amendments. The basic thrust of my submission is that I would not like to see access to psychiatric records removed from Bill 34 until and unless adequate provision is made for their inclusion in the Mental Health Act as a whole.

6 p.m.

Let me take a moment to review how the matter is currently dealt with by the Attorney General, and how the matter would be dealt with if it remained under Bill 34.

A review of the literature, law reform and clinical, shows that there is usually an exception provided for what would otherwise be unlimited access to patients on files. How that limitation is phrased is quite varied and broad. It could be phrased as broadly as saying that the hospital would have the discretion to limit access if it were in the best interest of the person to do so, which I submit is vague and subject to abuse and misinterpretation.

At the other extreme is unlimited access. Again, a review of the clinical literature suggests that if this committee were to provide unlimited access to medical records on behalf of patients--access to one's own records, respecting the privacy of one's records when third parties want to look at them--no great harm would result from that.

If we are going to have something less than unlimited access, we ought to be careful of how we word the exception. We ought to be careful how we leave the discretion with the head of the institution to decide, "I think some other interest prevails over your right to see your own file and to see personal information about yourself that is being used to determine your care and treatment." We should start with the presumption that people have a right to see information that has a bearing on their care and treatment.

We suggest, either in the access to clinical files provision in Bill 7, in the Mental Health Act or in Bill 34, that there be restriction only if there is the risk of serious bodily harm to a third person. Only in that very limited and exceptional circumstance should the person's right to have access to his or her own information be limited.

As it is currently worded in the Attorney General's amendment to Bill 7, there is an exception if "disclosure of the clinical record is likely to result in,

"(a) serious harm to the treatment or recovery of the patient while in treatment at the psychiatric facility; or

"(b) serious physical harm or serious emotional harm to another person."

I consider that clause, entitling the head of the institution to invoke emotional harm to another person as a justification for denying a person access to his file, to be too broad.

The matter is also dealt with in two places in Bill 34. The manner in which it is covered is not entirely happy.

First, the relevant limitations on access to information on oneself appear to be contained in section 20 of the bill, "A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual." Though it does not appear in the part of the act dealing expressly with access to personal information, it seems clear that this section would apply as one limitation.

There is also section 45. As amended, it says, "A head may refuse to disclose to the individual to whom the information relates personal information." In section 45a, it expressly imports section 20. If it is information about yourself, the head may refuse to disclose it on the grounds of section 20, which I just read, or, in addition, on the grounds that it is "medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual."

My submission is that the manner in which the exclusion is drafted, both in the Attorney General's amendments and as currently worded in Bill 34, is unduly broad. The possible exigencies that might arise do not need such broad, exclusionary language.

The other main problem I have with the way access to clinical files has been presented in the Mental Health Act in Bill 7 is that subsection 29a(16) says, "This section does not apply to a clinical record or a part of a clinical record that was prepared before September 1, 1986."

I can only surmise that this was an attempt to allay concerns that patients may wish to have access to their files dating back before this fall, files that were collected before physicians were warned, if you will, that one day the patient might indeed have a right of access to his file.

While I may have some sympathy with that argument, it seems obvious that psychiatric patients deserve equal treatment of the law, and the purpose of Bill 7 as a whole is to give that to them, but if we compare the access they would have subject to that restriction in Bill 7 with Bill 34, we find section 63 of Bill 34 says, "This act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this act comes into force."

It is clearly the intention of Bill 34 that people should have access to private and personal information about themselves, whether it was recorded before or after the act came into force, and psychiatric patients are entitled to the same treatment.

The thrust of my submission is that, while redundancy is not a desirable component of any legislation--ultimately, it is not desirable to cry out for access to clinical files via both Bill 34 and the Mental Health Act in Bill 7--I am not comfortable suggesting to the committee that it should be removed from this bill until the degree of access that would be available under this bill is ensured under Bill 7. If it is to be preserved under this bill, the brief submitted has suggested some deficiencies in the bill that would make psychiatric patients' access to their files less effective than it should be.

The single problem that causes the most difficulties is the transitional



section, section 60. Subsection 60(2) says, "This act prevails over a confidentiality provision in any other act unless the other act specifically provides otherwise." Subsection 29(3) of the Mental Health Act says that the officer in charge of an institution may disclose a file to a patient with the patient's permission. It is permissive; it is not mandatory.

There is nothing that requires the officer in charge to do that, and on the reading of this, my fear is that for the next two years, the discretion of the officer in charge to refuse a patient access to his or her file would continue. That would mean access to clinical files would not be an effective reality for another two years. That does not seem to be justifiable.

In addition, the initial discretion whether to grant a patient access to his or her file is left with the head of the institution, with review to the commissioner. However, as currently worded, I am afraid Bill 34 would provide only a very limited jurisdictional review to the commissioner. Provided the commissioner is satisfied it is subject matter that may fit in one of those exceptions I have outlined in section 20 or section 45, the commissioner can go no further.

We recommend that the commissioner have the opportunity to review the file in question and to substitute his or her opinion for that of the head of the institution. That is the only way to ensure not only that justice is done but also that it appears to be done, and that the head of an institution is not declining to grant a patient access to a file for an improper reason. Having regard to the time, I will stop there, subject to questions the committee may have.

Ms. Gigantes: Generally, from your point of view and the interests with which you are concerned at the advocate office, would it be better to have a general bill, such as this one, properly set up to govern the area you are concerned about, or to have the standards for access to information defined within the Mental Health Act?

Mr. Giuffrida: Let me understand the options. Is the first one to have a general bill providing for access to medical records generally?

Ms. Gigantes: Yes. Would it be better to have Bill 34 in place, in the way you would like to see it changed, or to have measures in the Mental Health Act?

6:10 p.m.

Mr. Giuffrida: Your question points out what is perhaps an unjustifiable inconsistency, as both pieces of legislation currently stand. If these pieces of legislation are passed substantially as they are now, it would mean that, if you are a psychiatric patient anywhere in the province, in a general hospital or in a psychiatric hospital, you would have access to your clinical file, but if you were a physical patient in a public hospital, you would not.

Ms. Gigantes: Right.

Mr. Giuffrida: I do not come before you as an advocate for the rights of physical patients, but the inconsistency is glaring to me and I would personally support an attempt at legislation that would provide across-the-board access to clinical files.

Ms. Gigantes: I see, but that would be the reason rather than any other benefit you could see? Can we see any other benefit from having one piece of legislation which provides for rules and regulations for access to information and governs all other areas?

Mr. Giuffrida: I suspect that appropriate access to clinical files could be achieved by a number of means. I feel that the exclusionary criteria for access to psychiatric records is the same as access to records of patients in physical care. It seems, as a matter of convenience, one could deal with them in one piece of legislation.

In the number of years that have elapsed since the Krever report was first made public, the expectation of such a piece of legislation, I suppose, has been in the minds of many people, so when the limited access initially apparent from Bill 34 came on the scene, we were supportive of that. If there is the political will to have one bill providing broad access, that could work as well.

Ms. Gigantes: So much the better.

The one other area I am going to ask you about is your attempt to set a test which you would consider the very widest test that you would like to see about disclosure of psychiatric files, and that is the danger of risk of serious bodily harm to a third person. Could you give us some comments--we have had them in Bill 7 discussions--about the whole concern that is expressed by psychiatric professionals and others about the danger of risk of serious emotional harm to a third person? The classic case is somebody who somehow gets information about incest in the family.

Mr. Giuffrida: First, I am faced with the difficulty of proving a negative, trying to prove that something has not happened. To do that, I can only direct your attention to the studies that have shown, first, that not that many people request access to their clinical files. For example, at St. Elizabeth's Hospital in Washington, D.C., in a three-year period when 10,000 to 12,000 patients were admitted to the hospital, only 200 of them even requested access to their files. We are talking about a very small population in the first place.

Again, I am referring to page 2 of our submission. A 1979 US study, looking at the results of its own study and the results of two other studies, said: "All three studies suggest positive benefits, including enhanced patients' rights, improved treatment and improved staff-patient relationships. It appears that few patients were harmed by this policy and the benefits seemed to outweigh the costs. We are aware of no study showing a significant negative impact of patient access to the medical record."

One may hypothesize situations, as you have for us, about sensitive information being disclosed to a doctor or other health care provider where the provider of the information does not want it to get back to the patient. First, very few people are going to request access. Second, if the patient were to request access to the file, it seems to me it is open for the physician to say: "There is sensitive information in here from someone you care about. Would you reconsider your request?" There is a doctor-patient relationship and they can have a dialogue about that.

Third, while there may be sensitive information provided by a third party, one has to balance the desirability of keeping that private with the need for access by the individual concerned. Psychiatric records are different



in one respect from the records of physical-care patients, in that mental illness is not something that can be diagnosed under a microscope. Clinical files are necessarily impressionistic. They have a lot of anecdotal material. They have a lot of material supplied by third parties describing the behaviour of the individual. It is basically the clinical observation of the behaviour of the individual that allows the physician to make a diagnosis and to prescribe appropriate treatment. There are really serious problems about the accuracy of information that is provided by third parties.

In my experience as a patient advocate in one of the provincial psychiatric hospitals, as I was before I became legal counsel to this program, on occasions when I was able to review with clients what a third party said about them, almost always they had a different version of what happened. One may never know what, in fact, happened. It is one of the conundrums one faces in dispute resolutions in finding out the facts. There are often serious discrepancies between what a third party tells a physician the patient did and the patient's own version. On balance, I think the patient's need to know outweighs the possible embarrassment it may cause the provider of information.

The Vice-Chairman: Maybe we can wrap up since we have another group waiting.

Mr. Sterling: Can I just ask a question?

The Vice-Chairman: A very short question.

Mr. Sterling: As far as patient disclosure is concerned, do you agree with Mr. Justice Krever's recommendations as to how to deal with it?

Mr. Guiffrida: He provides criteria as well for the exclusion of information. My suggestion is--

The Vice-Chairman: Please make it a fairly short answer.

Mr. Guiffrida: His exclusion has to do with information likely to have a detrimental effect on the physical and mental health of the requesting individual. My submission is that you could have an error-exclusion criterion, without causing any harm, that would provide broader access to files.

The Vice-Chairman: Mr. Guiffrida, thank you very much for your interesting comments.

The Advocacy Resource Centre for the Handicapped is the last organization we are going to hear from today. Thank you very kindly for waiting patiently. We know we are running behind schedule. Could you please identify yourself, your position and your organization? We will be glad to hear from you.

#### ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

Ms. McKague: My name is Carla McKague. I am the head of the litigation section of the Advocacy Resource Centre for the Handicapped which is a legal aid clinic serving people with mental, physical or emotional disabilities. I will try to be brief and leave a little time for questions.

A good number of the things I had intended to cover have already been covered by Mr. Guiffrida. Those can be applied to other contexts as well. Therefore, I will summarize some of what I was going to say.

I am a lawyer dealing all the time with clients who have physical, developmental and emotional handicaps and therefore tend to be in and out of institutions a good deal. One of the continuing endemic frustrations of my clients is the difficulty they have in getting access to their records and finding out about their disabilities and treatment.

There are some concerns about psychiatric records, which Mr. Giuffrida has described. Of course I am also aware of the proposal to move psychiatric records into Bill 7 and out of Bill 34. I have drawn some of the examples I want to give you from that area, because I think the most dramatic situations tend to arise and would illustrate the points a bit better.

In general, the committee is probably well aware that during the last 15 or 20 years, there has been a real trend in North America towards including patients in increasingly significant ways in making decisions about their treatment, participating in their treatment and being informed about their treatment. That has included a trend to greater access to records, particularly in the United States.

As this bill stands, it limits that access in some very important ways. First, you had some discussion earlier today, of which I heard the end, from the Ontario Hospital Association indicating that it does not cover public hospitals or, I might add, private hospitals and community hospitals. It would present the anomaly of whether a person could get access to a file depending on the particular institution in which he happens to be treated. Given the figures mentioned before about the level of government financing of these institutions, I think you have every reason in the world for including them in the bill and no reason that I can see for leaving them out.

Second, the bill provides for unacceptable limitations on access in cases in which the facility believes that access would be counterproductive to treatment or disturbing, in one way or another, to third parties. I would like very briefly to summarize the reasons for providing access and then mention some counterarguments to those limitations. Mr. Guiffrida has already mentioned erroneous information getting into the records, and if there is no access, it cannot be corrected. I would like to give you a couple of examples I have run into in that respect.

6:20 p.m.

One case of which I became aware in the last few weeks had to do with a psychiatric patient who informed his physician that he needed to leave the hospital because not only did he have a business to run, but also he was undergoing therapy for cancer. One of his family members, for motives not known to me, informed the doctor that both these beliefs were delusional. That was entered in his chart and acted upon.

In fact, both statements of the patient were perfectly true, as the doctor found out from another family member some time later. If the patient had had access to his file and had been aware of the false information, he could have taken steps to disprove that information and have appropriate measures taken to get back to his cancer therapy and to have somebody look after his business.

In the second case, which I dealt with personally, a young man was committed to a psychiatric institution largely on the strength of information that he had pointed a loaded handgun at another person. When I eventually got involved and investigated, the information was totally untrue. Since the young



man did not know it was in his file, he did not know why he was being held and he was unable to disprove it.

Another reason for allowing access is that it gives patients the opportunity to have more informed participation in their treatment. The doctor, of course, has an obligation to inform the patient. Granting access to a clinical record is not a substitute for that personal process of informing, but it can be an important component of it. It can enable the patient to formulate specific questions to ask the doctor.

As well, we are finding that when people are transferred between hospitals, very often the patient gets to the hospital some days before his file gets to the hospital from another facility. If the patient knows about his diagnosis, his treatment and drug allergies, he can be very helpful to the new facility while it waits for the file to arrive.

A study that appeared in the American Journal of Public Health in 1976 demonstrated that nearly half of all patients do not follow their doctors' prescriptions. Here, I am talking about patients generally, not psychiatric patients. It also discovered that a large number of these people would have followed the prescriptions if they had been adequately informed about the nature of their illness and what the proposed medication would do. I suggest that access to records can materially assist in that process and in encouraging people to comply with the treatment prescribed for them.

Third, an important reason for access is that frequently patients are asked to release information to third parties. The lawyer for the OHA said, "When I do personal injury litigation, I write away to the hospital and I have no problem getting the file." She is quite right; she does not. I do personal injury litigation as well. I never had any problem getting a file. If I were going to do malpractice action, I might have a little problem getting a file.

If I release my file to someone else, to a lawyer, a family member or another doctor, I am releasing it blind in the present situation. I do not know what is in there. How can I make a decision whether I want somebody else to see the file when I do not know what is in it? It could put me in a very difficult situation.

Fourth, a lot of patients are very uneasy about their records. They have a feeling there is something in them the doctor is not telling them, that they may be fatally ill and it is being kept from them. The fears of what might be in the file are usually substantially greater than is justified by what is in the file.

There are a couple of studies to which I understand the Psychiatric Patient Advocate Office brief refers. One was done in the mid-1970s at the Western Psychiatric Institute and Clinic in Pittsburgh on psychiatric patients. It concluded that there was "little, if any, direct harm to patients having occurred consequent to having read the record. The great majority of patients viewed the experience as a positive one for them."

The only negative experience the researchers ran into was when they refused to disclose one piece of information to a patient. Patients generally were surprised and satisfied to learn that the record was a fairly accurate description of their behaviour.

The second one I want to refer to, as did Mr. Giuffrida, is the policy of St. Elizabeth's Hospital in Washington, D. C., which is also a psychiatric

facility and has had some notably violent and difficult residents. Since 1975, it has had a policy of granting full access unless the patient is actively or imminently violent. It has never used that exception. It has never refused access to a file. The people there found that practice of full disclosure has had the result of increasing the level of trust between patient and doctor, improving communication and reducing anxiety.

As I said, the common reasons for not providing access are, first, that the file might be upsetting or damaging to the patient and, second, fear of embarrassment or danger to third parties. Neither of these arguments has been shown to have any empirical justification whatsoever.

I mentioned the Western Psychiatric Institute and Clinic, where it said there was "little, if any, direct harm to patients." After two years in operation, the St. Elizabeth's study concluded that granting patients access to their records had had no negative therapeutic effects and there had been no untoward events as a result of disclosure. A year later it reviewed things and said that was still the case. In cases where it was felt to be a possibility that disclosure could be damaging, what it did was to have a clinician discuss the record with the patient first and then it allowed full access. I am not aware of any study of the effects of file disclosure which has had a different outcome.

The third concern that is sometimes raised is that of expense, that there would be a great rush of patients wanting to see their records and a lot of duplicating and time spent. Again, in practice, this does not happen. File requests at St. Elizabeth's average about 100 per year. It seems to me the expense of setting up a mechanism to review access requests and screen records would be a lot greater than the expenses of simply copying the files when people ask for them.

I want to make three recommendations to the committee. I am obviously dealing with only a very limited part of this bill. I wish I had had time to prepare and address a number of other issues. However, first, I recommend that any patient in an Ontario health care facility be permitted unrestricted access upon request to his or her clinical record.

Second, any patient may request correction or amendment of that record. The facility should either make the requested amendment or inform the person of its reasons for not doing so and allow the person to file a concise statement of disagreement, which would be included in any future release of information, and the request of the patient should go to any specified person to whom information has been supplied in the past.

Third, because in several of the areas I work in I deal with patients who are deemed incompetent to make decisions about their medical treatment, whether for mental disorder or developmental disability, I suggest that in the place of a person undergoing treatment who is incompetent to make those treatment decisions, the same access should be granted to whatever person is legally authorized to make decisions on behalf of the patient so that he or she can also be fully informed in addressing those very important decisions.

I will stop there.

The Vice-Chairman: Thank you very much, Ms. McKague. Are there any questions from committee members?

Ms. Gigantes: You heard the earlier suggestion by Mr. Giuffrida that



the minimum test we should permit--or is it the maximum test; I never know which way to say it, half-full or half-empty--should be no stronger or looser than the danger of risk of serious bodily harm to a third person. Do you think that is reasonable?

6:30 p.m.

Ms. McKague: I am suggesting that is a risk that simply does not occur in practice. It is a figment of fears. I have seen people look at files which have some pretty upsetting information about themselves and none of them has yet gone out and assaulted anyone because of it.

I think it might be interesting here to point out that at present under the Mental Health Act there are certain people who are allowed access to their files. There are some limitations on the access, but they are virtually never used.

Those people who are allowed access are the people who are preparing for hearings before the regional review board because they have been involuntarily committed and they are fighting it; or they are people who are preparing for hearings before the Lieutenant Governor's Board of Review because they are sitting, usually in a maximum security facility, having been found not guilty by reason of insanity of what are sometimes some very serious crimes. These people get access to their files.

In other words, we are currently allowing access to the most disturbed, most likely to be violent portion of the population and we are denying it to the middle-aged lady who is depressed. I do not think there is a lot of logic in that.

Ms. Gigantes: That is a good point.

Mr. Sterling: In summarizing your remarks, would you rather deal with it under Bill 34 or are you satisfied with Bill 7?

Ms. McKague: If it is going to be in Bill 34 without the types of exceptions to which I have referred, if it is going to be in Bill 34 as unrestricted access, then I see no reason to segregate it. If it is going to be hedged around with the kinds of "ifs" and "what ifs" and concerns that are currently reflected in Bill 34, then no, I do not want it in there. Bill 34 would also have to be extended to cover all health care facilities, otherwise the Mental Health Act is going to have to pick up the slack.

Mr. Sterling: Bill 34 requires, for instance, if a third party has given information about a psychiatric patient, that that third party give notice and then there would be a considerable procedure to go through.

Ms. McKague: That is a problem.

Mr. Sterling: That would be a problem?

Ms. McKague: That is a serious problem because, as Mr. Giuffrida pointed out, a large portion of the contents of psychiatric records is generally third-party information and generally, I might add, highly inaccurate. I have yet to pick up a critical file that did not contain at least one, and usually more than one, major error of fact and usually from a third party.

Mr. Sterling: In your opinion, is the procedure set under Bill 7 less onerous for the patient than what would be under Bill 34?

Ms. McKague: I have concerns about the proposed amendment, the Attorney General's proposed amendment to Bill 7, as well because of the limitations on access, but I have no problem with the procedure. I think it is a good procedure.

Mr. Sterling: But if it is this or that, you are saying Bill 7 then?

Ms. McKague: No. I am saying what I would like is the better of the two provisions in whichever act is going to place the least restrictions on it. I do not have some overwhelming desire to see it in one act or the other. No, let me take that back. I am here not wearing my usual hat, which is dealing with psychiatric issues. I am here as well talking about people who are developmentally disabled or who are physically handicapped. Those people are not going to be covered by Bill 7. So even if psychiatric patients get into Bill 7, these other constituencies have to be represented in Bill 34.

Ms. Gigantes: The only exclusion under section 54, as amended, would be people covered by the Mental Health Act.

Ms. McKague: Section 20 is--

Ms. Gigantes: Sorry. Subsection 59(2).

Ms. McKague: Clause 45d. "A head may refuse to disclose personal information that is medical information where the disclosure could reasonably be expected to prejudice the mental and physical health of the individual." There are still those limitations just for medical records as opposed to psychiatric.

Ms. Gigantes: You are going to get people saying I do not want this person to know that three weeks from now we might have to cut his leg off.

The Vice-Chairman: Ms. McKague, thank you very much for appearing before the committee. My apologies again for having you wait so long, but we appreciated your presentation today and I want to thank the committee members.

The committee adjourned at 6:35 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

APPOINTMENTS IN PUBLIC SECTOR

SIMULTANEOUS TRANSLATION

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, MAY 28, 1986





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)  
VICE-CHAIRMAN: Mancini, R. (Essex South L)  
Bossy, M. L. (Chatham-Kent L)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Martel, E. W. (Sudbury East NDP)  
Morin, G. E. (Carleton East L)  
Newman, B. (Windsor-Walkerville L)  
Sterling, N. W. (Carleton-Grenville PC)  
Treleaven, R. L. (Oxford PC)  
Turner, J. M. (Peterborough PC)  
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Cooke, D. R. (Kitchener L) for Mr. Mancini

Clerk: Forsyth, S.

Clerk pro tem: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Assembly:

Mitchinson, T., Director, Information Services Branch

From Coopers and Lybrand Consulting Group:

Applin, M., Consultant

From Carruthers Shaw and Partners Ltd.:

Carruthers, W. E., Architect

From the Committee on Legal Issues in Psychiatry:

Weagant, B.

From the Coalition on Psychiatric Services:

Horley, S.

From Riley Information Services:

Riley, T. B.

From the Ministry of the Attorney General:

McCann, S. B., Counsel, Policy Development Division

Individual Presentation:

Rubin, K.

From the Facility Association:

McKay, D. D., General Manager

Cumine, R. B., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, May 28, 1986

The committee met at 3:59 p.m. in room 228.

APPOINTMENTS IN THE PUBLIC SECTOR

Mr. Chairman: We have a quorum.

The first item is consideration of the draft report on appointments in the public sector. You have that in front of you now. You have had copies of the report for some time. We tabled the report so you would have the opportunity to take it to other interested parties--the caucuses, the leaders, whomever you wanted.

There are several ways we can proceed. I am not aware of any amendments. I asked you to make us aware of them so we could work out wording changes if necessary. We can proceed with it. There are two ways to proceed and I am going to ask you to choose one of them. The normal process at this stage would be to take a motion to adopt the record, forward it to the Legislature and then have a general debate around that. If you would like, it is also quite correct to proceed on an item-by-item basis. This is divided up into sections which would assist us in doing that. The first question I will put to you is, how do you want to proceed with this?

Mr. Bossy: I have a question on page 2.

Mr. Chairman: Let me deal with this first item first, and then we will go to that. All right?

How would you like to proceed? Do you want one motion to adopt the report, or do you want to go through it item by item?

Mr. Bossy: This could be relevant, because it reads, "The recommendations contained in this report represent a consensus of opinion rather than complete agreement on every issue that was before the committee." Each member of the committee may not agree with every recommendation.

Then we go on to say, "Your committee is pleased to present a report that each member can support."

Mr. Chairman: Yes, that means each member can sign it. That is a normal clause in all our final reports. It gets us around the problem that in every report there may be sections with which a member does not agree, but the report in general is one he or she finds supportable. Without accepting a lot of dissenting opinions and things like that, the caveat is there that an individual member may not agree with every single recommendation. We always put that in. It is logical that we do not all agree with every word of every committee report.

What is your pleasure, one motion, or do you want it item by item?

Mr. Newman: One motion.



Mr. Chairman: Is there any discussion around the one-motion concept?

Mr. Sterling: I have not read it, even though we have had it for two weeks. I did not know we were going to bring it on today.

Mr. Chairman: I must say I gave the committee two weeks' notice that we would have this vote first thing today.

Mr. Sterling: I know.

Mr. Chairman: May I take it then that Mr. Newman moves the report be adopted and forwarded to the Legislature?

Mr. Sterling: I have to retain the right to put in a dissenting report.

Mr. Chairman: In this committee, we have always said if someone has a dissenting opinion, we will give him a reasonable number of days to put it to the committee and we would incorporate it.

Mr. Newman: I see.

Mr. Chairman: All right, I have a motion to adopt the report.

Mr. Sterling: Before you do that, notwithstanding your fair notice, I think we just put too much work into this for me just to adopt it or to accept this as the best report we can create. Therefore, I would humbly request another week to look at it.

Mr. Chairman: All right, you will get your chance. Is there any other discussion on the motion?

The motion is to adopt the report and forward it to the assembly.

All those in favour?

Those opposed?

I have a problem here. There is a tie vote, with some members not voting, so I will try it again.

Those in favour of adopting the motion?

Good, people are changing votes.

Those opposed?

What is your count on this?

Mr. Sterling: Four to three.

Clerk of the Committee: I have Mr. Sterling for both sides.

Mr. Chairman: Let me try for a third and, I hope, final time. Some of you are being very quick about how high the hands go.

Ms. Gigantes: I have not been voting because I have not participated in the writing of this report. Here comes somebody who can vote. I do not feel I can vote on this.

Mr. Chairman: You are here to vote.

Those in favour of the motion to adopt the report and forward it to the assembly for discussion? All those in favour, please indicate by raising your hands.

Those opposed?

Now you voted. I assume that means you want to go through it item by item.

Mr. Morin: Yes, but I do not want a melee. You have a motion.

Mr. Chairman: I am open to motions. If you are not ready to vote on it, I will say only that this has been on the committee's agenda for 11 months. You have had a report in somewhat finalized form for about a month. You have had a final draft report for about three weeks. You have had two weeks' notice to prepare yourselves and everybody else to vote on it. It is fine if you want to take another week to consider the matter. That seems to be reasonable, but if you give yourselves another three weeks and do not read the report, you are not helping the process much.

Do I hear any motions?

Mr. Sterling: I suggest that we put it off for one week. We have an opportunity to discuss simultaneous translation at 4:05 p.m. and it is now 4:05 and we have some others coming in on Bill 34.

Mr. Chairman: The suggestion is that we set aside this business until next week's meeting.

Mr. Warner: That is fine. Is that with an understanding that all three parties are prepared to deal with it at that time? We are not looking at another delay?

Mr. Newman: That will be the last last delay.

Mr. Warner: Is that like the first final?

Ms. Gigantes: Cross your hearts?

Mr. Sterling: Will we be dealing with that on a clause-by-clause basis?

Mr. Chairman: If you like. It is up to you to go through it section by section. While we are delaying this one more week, I am going to plead with you again to please contact Mr. Eichmanis if you have an amendment or if you want a wording change. That will give us the opportunity to do a little drafting so we do not spend all week fumbling around for words. We will have a little notice on amendments or changes of wording that you want and John will have the opportunity to draft some changes to present to the committee so we are able to deal with the matter.

#### SIMULTANEOUS TRANSLATION

Mr. Chairman: You have a report on simultaneous translation which was sent out in your package.



Mr. Mitchinson: I would like to introduce Mr. Bill Carruthers from Carruthers Shaw and Partners, the architects for the electronic Hansard project.

At the committee's suggestion, we have spent the last week reviewing the possible locations for the simultaneous translation facility for the chamber, recognizing the committee's concern that it be as unobtrusive as possible. If it is the committee's preference that we focus on the location, then I will turn the floor over to Mr. Carruthers who can explain the various options that have been considered. He has a drawing which we will show of what we consider to be the best modification of what we have presented to date.

Mr. Carruthers: We think we have covered all the possible locations in the House that might reasonably be considered for an in-House enclosed translation facility. Starting with the Speaker's gallery, we looked at two locations. One is immediately above the entrance vestibule where we have currently housed the camera which focuses on the Speaker as part of the televised Hansard. It is also the gathering place for the media cameras.

4:10 p.m.

That has always been a problem. It was a problem when we were looking at a good location for the Hansard operator. It is a problem because, sitting in that location, unless you do something physically to overcome it, you have a visual cutoff from the railing in front of you. In order to overcome that, you have to make significant changes or a significant addition to the existing vestibule which then makes it visually the most dominant element within the chamber. It would start to conflict uncomfortably and unhappily with what is the most important element in the room, namely the Speaker's screen and the Speaker's dais.

The other location we had in the Speaker's gallery was what is now called the transcriber's and Hansard supervisor's gallery. That is on the side of the House opposite the Hansard operator, and is the new, small projection of the existing gallery that will be provided in the work this summer. The problem with that location is twofold. It has the same difficulty as the location over the entrance vestibule because a number of rows of members immediately below you are cut off. As well, you are looking at the backs of heads to some extent.

We also have a visual problem there. To overcome that problem, we get into the same kind of situation as if we located above the vestibule. You have to create a visually dominant element in that location of the room; it would destroy the carefully-orchestrated symmetry of the room, which has been there since it was originally put together.

We also looked briefly at the press gallery end, thinking we might take the approach that we would give the translators a reasonable view of everybody in the House except the Speaker. If you do that, the only way you can handle the Speaker is by providing a television monitor, mirrors, or some kind of fancy arrangement.

Again, we have the same problem. Putting in an enclosure that would allow reasonable vision of the seats in the foreground means building a substantial addition in competition with the rest of the composition that makes up the Speaker's screen and the Speaker's dais.

We have also looked at two locations in the members' gallery. One

location is an enclosure beside the vestibule, as close as possible to the centre of the floor. With that, we have a serious sight-line problem. Unless you push the enclosure forward from the inside wall of the vestibule, you lose a good portion of one side of the House.

We ended up with what we feel is the best solution, and that is in the corner of the members' gallery.

Mr. Mitchinson: Significantly modified from the last time you saw the drawing.

Mr. Carruthers: In order to accomplish this as efficiently and as unobtrusively as possible, we have removed a portion of this very thick wall separating the chamber from the vestibule and put in a piece of glass. The platform of the booth is raised about three feet above the top level of the members' gallery so they are looking about two or three feet over the heads of the rear row of the seating in the chamber.

We have angled it this way so the focus of the translators is roughly in the centre of the floor. Access to the booth is by a stair from the vestibule so that when the interpreters are changing every 20 minutes they do so without having to come in and out of the House.

We have also created the location by relocating the stair from the members' gallery which, at the present time, is in the same row as the location of the stair on the other side. We have taken the stair from this section and moved it there.

As a result of all this, we do lose some chairs in the members' gallery, but only four at the most. In the previous scheme, which we had designed to meet what we understood were the most stringent requirements of the interpreters' association, there would have been a loss of 12 members' seats.

We feel that from this location they can physically see every member of the House. They will be looking at the backs of heads on the government side of the House. In a sense, their view of the House is similar to that of the Hansard operator, who is in this little balcony immediately above them.

In summary, of all the possibilities we looked at, none of which is perfect, this is the best solution we can find.

Mr. Warner: Could we go back to the things you looked at, the locations you examined? You said you looked at the possibility of the area directly above the Speaker's chair. Obviously, the drawback is the Speaker himself, but are there not more members whose view would be obstructed if you located the booth at the opposite end of the gallery and on the first level? The interpreter will see only the Speaker's head if the booth is located above the Speaker's chair, but does the location you have suggested not present a problem for the interpreters in terms of some members on the opposite side of the House?

Mr. Carruthers: No. From that location they can see every member in the House, although they may not see every member from the best vantage point. In that sense, the location above the Speaker would be better because members tend to address the Speaker face on, and in most instances the interpreters would see them.

However, another difficulty of that location is that, while you see



everybody, you see only the top of the Speaker's head if you are located so as to lean over the railing of the Speaker's gallery looking down over the Speaker. To accomplish that in a booth it would have to be raised and projected forward in the press gallery over the Speaker's dais and screen.

I can conceive of no successful way to handle that architecturally so as not to diminish the importance of the Speaker's location.

Mr. Warner: I was attracted to that location because you mentioned that members are supposed to rise and face the Speaker. I assumed that would make it easier for the interpreters to follow what is going on.

The second question concerns the need for a booth. Can you prove it is essential to the interpreters' operation that there be a booth, that they cannot function in the open?

Mr. Applin: I can respond to that. The Association of Legal Court Interpreters and Translators internationally has propagated a set of standards for working conditions and regulations governing the nature of the work. They are governed under the International Standards Organization to which I think Canada is a subscriber. The minimum qualifications for interpretation, whether permanent or temporary locations in a conference room, is an enclosed booth.

There are two reasons. First, the booth aids in the concentration needed to undertake simultaneous interpretation. It is a demanding occupation which, according to the interpreters, requires a tremendous amount of concentration. Getting the sound to the booth and enclosing it so that extraneous sound is excluded from the interpreters allows them to concentrate on interpreting the official record that comes across.

Second, and somewhat less important, a booth isolates the rest of the conference from the noise of the interpretation. However, the primary reason, according to discussions I have had with interpreters, is their need for working conditions which allow them to generate the concentration necessary to do this arduous task. This standard has been written since the interpreters have been organized.

4:20 p.m.

Mr. Mitchinson: Could I reply to your first comment? When we met the interpreters and took them to these areas in the members' gallery, they pointed out it was not important to see every member's face. They would get their audio through the electronic audio. They would know to do their interpretation that way.

The importance was that they have as broad a possible feel for what is going on in the room as opposed to being able actually to--they do not lip-read. None of that comes into play. They did indicate that a view of the Speaker, and the ability to anticipate where the Speaker is going by watching his eyes, and that sort of thing, was a very important element in their minds.

Mr. Warner: They preferred the location you have identified?

Mr. Mitchinson: They were ecstatic about the location we showed them.

Mr. Applin: We brought them into the House to show them the options. The person who came in compared it to the conditions under which the interpreters work in the federal House and told us, without prompting, it was

far and away a better location than the federal people have provided them. They were willing to give up some square inches if they could be located in that position.

Mr. Mitchinson: They would stand rather than sit.

Mr. Applin: It is a good location.

Mr. Warner: They will not have to stand.

Ms. Gigantes: There might be another problem in trying to place translation services over the Speaker, because if you have to move the booth forward, there is always the possibility of shadow on the Speaker interfering with the television coverage.

Mr. Mitchinson: That is a very prominent shot on the television coverage, that overall chamber shot with the Speaker's dais.

Mr. Warner: That is true. Good point.

Mr. Bossy: Did you check why they have two booths in the House of Commons compared to one we are looking at? I was there for four and a half years and I cannot tell you why. I know they used both.

Mr. Applin: It is primarily because the use of the second official language is much higher in the federal House than we anticipate it will be in the chamber here. Their manning is higher than we are proposing, and they are proposing to cut it back. They went fairly rich when they manned their interpretation facilities, and I know, from conversation with the federal people, they are looking to try to cut back on the number of interpreters they have. They have problems finding work for them during the intersessional periods. They feel they have a system which is too costly.

Mr. Bossy: You say there is more work there than here. The only thing is, it is still going to be interpreted all day long because it is from English to French. There will be less French to English by far, but some days it could be that it is entirely English to French.

Mr. Applin: If you add up the interpretation, 100 per cent of something has to be interpreted one way or the other.

Mr. Bossy: That is right.

Mr. Applin: The fact of the matter is it will be predominantly English to French in this House, whereas it is somewhere in the region of 25 per cent French to English, 75 per cent English to French, in the other.

Mr. Bossy: I had thought that it was so because when there is a switchover--they are only able to take so much at a time, because it is very demanding on them and they only last perhaps half an hour at a time--there would not be any interruption. If you have a booth there, will there be enough space within that booth that someone else is prepared to take over immediately when someone cuts out?

Mr. Mitchinson: Yes, there are two.

Mr. Applin: There are two stations there and enough room for a third person, at shift change, to move in and take over. It is a bit like coming



over the boards in hockey, but it is not quite so difficult here because predominantly it is one person translating from English to French. It has to be timed.

Mr. Bossy: You say one person?

Mr. Applin: It is primarily one translation direction and somewhat less of a need to switch quickly into the other language.

Mr. Bossy: You are going to have two people there? The booth has to be manned by two people, one for English to French and the other one for French to English.

Mr. Applin: Yes, that is correct.

Mr. Mitchinson: No, that is not quite accurate. The same interpreters interpret both ways.

Mr. Bossy: They are totally bilingual. In other words, you are saying they can shift gears.

Mr. Mitchinson: Yes. They shift.

Mr. Chairman: Anything else? All right. The first recommendation is that the designated area be the location of the translation booth. Let me put that question to you. Are you in agreement with that?

Interjection: Yes.

Mr. Chairman: That is agreed to. The second recommendation then is a recommendation concerning staff. You have this on page 2 of your staff report.

Mr. Mitchinson: Just before you move away from the first recommendation, we have located the booth behind the government benches. It is irrelevant to us which side of the House it is on, so I think we would like to leave to the committee the decision on which side of the House.

Mr. J. M. Johnson: The government side.

Mr. Chairman: We just made it.

Mr. Mitchinson: Fine.

Mr. J. M. Johnson: There are 70 faces to look at from the government side and only 49 from the other.

Mr. Chairman: Thanks, Jack. The second recommendation on page 2 is on staffing and organization. Maybe one of you would take us quickly through these recommendations.

Mr. Applin: On page 2, we take you through some of the standards laid down by the International Association of Conference Interpreters for simultaneous two-way, two-language interpretation. This picks up on Mr. Bossy's point that it is an arduous task, and the single longest unrelieved work period for one interpreter is 45 minutes. That is the outside limit. Typically, if you have two, they work at 20-minute to 30-minute stretches.

The standards indicate that if the interpretation is to last from 45

minutes to four hours in one booth, there should be two interpreters, and from four to six hours in one booth there should be three interpreters so they can spell each other through the booth. On that basis, we are recommending that we need three interpreters to cover the House alone. We have to double that to cover the Amethyst Room for committees.

We believe it is reasonable and prudent to add one more floater for vacation, sickness and flexibility for other reasons to produce a staffing unit of seven. That would allow us to man the House, the committee room and one person as a floater.

On page four, we deal briefly with the reporting relationship of this unit. Although it has not been determined yet, it is expected that it will report through the information services branch.

The last question on staffing that has to be dealt with is the nature of the employment of these interpreters. We lay out three options on page 3: We can hire contract employees who come in for the specific period of the House and when the committees are operating; we can hire permanent employees of the Legislative Assembly and find ways and means of using their skills outside of the sessions and the working periods of the committee; or we can hire full-time employees of another branch of the government and involve them for the period of the House operations.

Our preference is for permanent full-time employees of the Legislative Assembly, and to use those employees in other areas of government for interpretation services. We have already had some preliminary discussions with the Ministry of the Attorney General in that regard, and it is hopeful that there are ways and means of using interpreters in either its court services or as it extends interpretation services to boards, commissions and agencies. Those are still very much in the early days, but we are in discussion in that regard with Mr. Tobias at the Ministry of the Attorney General.

Mr. Sterling: How can we make a decision if we do not know whether they are going to be able to be used?

Mr. Applin: The decision around the interpreters' status--

Mr. Sterling: I guess we do not make that today then.

Mr. Applin: It does not necessarily have to be made today. If you can concur with the staffing level of seven to be attached to the information services branch, we can come back to this committee with more detail on the nature of their employment as we work that through.

Mr. Chairman: Let me try to get this clear then. The preference would be to have seven as the unit and that they would be employees of the assembly. That would be dependent on working out details of whether you could actually contract out enough to make sure they were full-time employees. Is that correct?

Mr. Mitchinson: We would attempt to get into an arrangement with the Attorney General's department so that in the summer period or when the House was not sitting, those people could be loaned on a cost-recovery basis to the Ministry of the Attorney General for work throughout the province or on boards and tribunals in Toronto. We have had indications that--

4:30 p.m.



Mr. Chairman: The thrust of your recommendations is that there are essentially seven in a unit, that they are employees of the assembly, so that we could have first call on their services, and that they will become full-time depending on whether you can find sufficient work for them to do. Their status will depend on whether there is enough work in other ministries or agencies to make them full-time. However, they would be employees of the assembly, and there would be seven of them. Is that right?

Mr. Mitchinson: Yes. Our indications are that, in order to attract them and keep them, they would be full-time employees of the assembly.

Mr. Chairman: All right. Let us proceed on that basis, then.

Mr. Warner: I just have one question. On page 5, you mention that the standing committee on members' services, which no longer exists, considered the options. Had it reached a conclusion?

Mr. Chairman: No.

Mr. Applin: That was in relation to the location of the booth, inside or outside.

Mr. Warner: But it had not dealt with the staffing issue.

Mr. Applin: We made a presentation to the members' services committee on the staffing issue. I think Mr. Johnson will remember that. It was made when a representative of the International Association of Conference Interpreters was here with us.

It was discussed, and I think informally agreed, that a unit of seven was required. However, it had been considered at some length by that committee in March, I believe, or April.

Mr. J. M. Johnson: It was exhibit 96.

Mr. Bossy: Concerning the staffing, I agree that each unit should have seven people. Also, they should be made full-time in order to make them feel secure here, because they would not feel too secure if they were only on a part-time basis. You may have quite a turnover. If these people are full-time, you train them, and they are used to the system.

Furthermore, there has been a demand for translation when committees travel in the summer or winter months--because we have two breaks in the Legislature. Those people could serve the committees.

Mr. Mitchinson: If I could just add to that, the Board of Internal Economy has asked for a comprehensive report on the provision of French-language services. There may be some elaboration on this and some flexibility built in.

Mr. Chairman: Any further questions?

Ms. Gigantes: The vote.

Mr. Chairman: Okay. The recommendation, then, is that there be seven in the unit, that they be employees of the assembly and that we attempt to make them full-time, but that it may be dependent upon negotiation with other ministries.

Mr. Sterling: Is that going to be the motion?

Mr. Chairman: I just wrote it.

Mr. Sterling: It depends on whether they are going to be useful.

Mr. Chairman: Yes; that is why I will say it again. The proposal is that there be seven people in the unit, that they be employees of the assembly and that they be full-time if arrangements can be made to occupy their time fully. That is really dependent on negotiations.

Mr. Sterling: The other thing we should ask, before we do that, is what the relevant costs of these options are. Do you have them?

Mr. Mitchinson: For full-time employees it will be approximately \$40,000 a year.

Mr. Bossy: That will be all costs, then?

Mr. Chairman: Yes, all costs.

Mr. Sterling: Is that \$40,000 per employee?

Mr. Mitchinson: That is right, \$40,000 times seven. That is \$280,000 a year.

Mr. Sterling: And what will it be if we contract for their services?

Mr. Chairman: It will be substantially more than that. For a one-day visit here--

Mr. Sterling: Do we have absolute figures for that?

Mr. Mitchinson: We have daily rates. Maybe Lynn can help me on this. By way of example, the interpretation that was provided to a committee for a relatively short time cost about \$120,000.

Mr. Chairman: For your information, it is about \$30,000 a day.

Mr. Sterling: Is it \$30,000 a day?

Mr. Chairman: A day, depending on how you use it.

Mr. Warner: You purchase outside.

Mr. Chairman: We just let one contract for \$128,000 for--

Interjection: That was a rare occasion.

Mr. Bossy: You were quoting on the basis of occasional use.

Mr. Chairman: That is right.

Mr. Bossy: So that would definitely be much higher.

Mr. Chairman: You pay the highest rate. We had to pay for equipment, setup and translation services, all of which were expensive. If you want a written record of it, it costs more. If they move around Ontario with the



committee, you have to pay their transportation costs. It can get extremely expensive.

Mr. Sterling: We should get quotations on this on the basis of how many days we want the service.

Mr. Chairman: My only problem is that it is really not within the jurisdiction of this committee. The Board of Internal Economy will take our recommendations about how many, inside or outside, where booths should be located--

Mr. Sterling: We should not make any recommendations on how we are going to do it as to whether we are going to have full-time employees or whatever.

Mr. Chairman: There is a split jurisdiction here. It would be relevant, for example, if we said, "Do not hire people, contract it out." We would be aware of the cost implication but, more important, we would be aware that the Legislative Assembly would not have these people at its first call. One of the other options is to use the existing ministry people, which is fine, except we would then be dependent on that.

Mr. Sterling: I would not get that on a contract. I would ask for it.

Mr. Chairman: We do not write the contracts and we do not let the tenders. The cost is relevant to us for consideration.

Mr. Sterling: What are we voting on? You have to know the parameters of what you are voting on. We say we want full-time people. We get a figure of \$280,000 and we do not get any figures on the other side. Part of my job is to try to get the best service we can for these simultaneous translations at the best price.

Mr. Warner: What other figures do you need?

Mr. Sterling: I need to know what it is going to cost to get a contract with a translation firm to provide seven people for X number of days a year.

Mr. Mitchinson: Maybe I can be of some help with a communication we delivered to the standing committee on members' services in January. We quoted the typical costs on a per diem basis between \$375 to \$480 per interpreter. The House of Commons currently pays \$305 per day for any work done by nonstaff interpreters.

Mr. Sterling: Yes, but that is on a casual basis. We are not talking about a casual basis; we are talking about a guaranteed period of six months, or whatever it is, plus maybe a month either way.

Mr. Mitchinson: I do not have anything further.

Mr. Chairman: We are happy to consider the cost side of it, but that is not essentially our problem. That is the biggest problem.

Mr. Warner: Right. Why would we get tangled up in this? We want to make a recommendation on a matter of principle, send it to the Board of Internal Economy and let the board worry about how to get around with costs, who is to be hired and how to do it. We deal with the essence of the thing and then let the board worry about the little nitty-gritty details.

Mr. Sterling: But the essence is the cost; you need the service.

Mr. Warner: One translation service.

Mr. Sterling: Right. You gave the best way of doing it for the taxpayer of Ontario.

Mr. Morin: That is for them to decide.

Mr. Sterling: Let us say we want simultaneous translation at the lowest possible cost.

Mr. Chairman: That is why this recommendation goes from us to the Legislature in principle but, in practice, it goes to the Board of Internal Economy whose job it is to establish the best financial arrangement.

Mr. Warner: How about wording it in such a way as to say our preference would be, because I think there is a matter of principle too, to hire the individuals as employees of the Legislative Assembly while recognizing they might be of value in other parts of the public service, i.e., in the Attorney General's ministry pending the cost consideration by the Board of Internal Economy? If they can come up with a better deal, okay, but our preference is that these folks be employees of the assembly and able to assist the Attorney General. I think that is a good principle.

Ms. Gigantes: There is an awful lot to be said for having the same people do the job for another ministry. If you have ever purchased translation service, either written or verbal, especially in technical areas, as a lot of our stuff is, you know it is pretty important to have people who have those terms at their fingertips. They are totally familiar with what is going on.

Mr. Sterling: I could not agree with you more, but you are going to get the same thing on a contractual basis.

Ms. Gigantes: You might and you might not.

Mr. Sterling: We have people coming back here. You might and might not get them here on a full-time basis.

Mr. Warner: You are hiring people, individuals.

Mr. Sterling: How many more offices are we going to lose in this place as a result of having this? We can see the booths, but are they going to require an office as well?

Mr. Warner: The seven of them will fit in your office, Norm.

Mr. Sterling: They will? There are already three--

4:40 p.m.

Mr. Chairman: Since there seems to be some division here and you are not your usual sweet-smiling, consensus-forming selves, I will put it to you in three parts.

The first part is the recommendation on page 3, that these people be "permanent full-time employees of the Legislative Assembly." I will leave in the words "with the possible loan of staff to other branches of government." That is the first recommendation.



Those in favour of it? Those opposed?

Motion agreed to.

Mr. Chairman: The second one is on page 4, which is that "a unit of seven simultaneous interpreters be formed."

Those in favour of that recommendation? Those opposed?

Motion agreed to.

Mr. Chairman: Is there anything else you need a decision on?

Mr. Mitchinson: No, sir.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT  
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: As the next order of business, the Coalition on Psychiatric Services is here to present a brief on Bill 34. Susan Horley and Brian Weagant are members.

We have enlisted the assistance of Eddie Bright, Clerk of the House of Representatives of The Gambia. He will be with us this afternoon. Please do not disgrace me. We will become an international incident.

For those of you appearing before the committee, it is an informal occasion for you to make any comments you like. Members have been given copies of the brief you submitted and will have an opportunity to ask you some questions. Please proceed. This is exhibit 106.

COMMITTEE ON LEGAL ISSUES IN PSYCHIATRY  
AND COALITION ON PSYCHIATRIC SERVICES

Mr. Weagant: My name is Brian Weagant and I am a lawyer in Toronto. I am speaking on behalf of the Committee on Legal Issues in Psychiatry. We call ourselves CLIP. Briefly, we are a group of lawyers and law students who meet monthly to consider strategies relating to law and psychiatry. Our members include lawyers from the private bar and legal clinics and we have several psychiatric patient advocates. Our organization is about two years old.

I am here to make some brief submissions on access to psychiatric records and the provisions under Bill 34. I appreciate there are also some provisions in Bill 7 now. We discussed it at our last meeting and decided it is a bit of a shell game for us. We do not know where the legislation will end up so we are making submissions to both committees. The general feeling in CLIP is that we prefer the wording of the sections under Bill 7, with one major complaint.

I have put three recommendations in front of you which you have seen before. The fleshing out of these recommendations was done very nicely by the Psychiatric Patient Advocate Office of Ontario on May 21. because you have heard these recommendations before and the explanations, I want to refer you to those submissions made on May 21.

We can do one thing a little differently today. I have here, from COPS, the Coalition on Psychiatric Services, a woman named Susan Horley, who wants to tell you about her experience with psychiatric records. This speaks to the issue of the arguments against giving records to patients, where people are told they will suffer emotional harm if they see their own records. We argue it is beneficial to the patients to see their records for many reasons, a major one being that records usually contain one or more errors. I think Ms. Horley will direct herself to these issues.

Ms. Horley: The Coalition on Psychiatric Services is an advocacy group. It has been in existence for about six years. We are concerned about several aspects of psychiatric care in Ontario. The group formed around the inquest into the death by therapeutic misadventure of a young man named Aldo Alviani. He was a patient at the Queen Street Mental Health Centre.

Since that time, 1979-80, the Coalition on Psychiatric Services has been involved in a number of issues relating to psychiatric patients' rights. Specifically, we were involved in negotiations around the setting up of the Psychiatric Patient Advocate Office. We have monitored the outcome of the inquest into the deaths of several patients at the Queen Street Mental Health Centre. We have continued to be involved in issues of law reform with regard to the care, treatment and rights of psychiatric patients. We strongly advocate consumer participation in mental health policy decision-making at all levels.

The member groups of the Coalition on Psychiatric Services, or COPS, are Margaret Frazer House, the Ontario division of the Canadian Mental Health Association, Houselink Community Homes Inc., Friends and Advocates Etobicoke and North York, Parkdale Activity and Recreation Centre, On Our Own and the Ontario Association for the Mentally Retarded. Our two associate groups are the Advocacy Resource Centre for the Handicapped and Parkdale Community Legal Services.

The Coalition on Psychiatric Services believes people should have much greater access to psychiatric records about themselves and believes there should be substantial reasons given if someone is to be denied access to his or her own records.

I am not a lawyer and I do not have a legal submission to present to you today. I want to speak about personal experiences. I was an inpatient and an outpatient at both a general hospital psychiatric unit and an Ontario psychiatric hospital for several years in the late 1970s and early 1980s. I have seen most of my records from one hospital and a quantity of them from the other hospital. Also, I work in a community mental health program in the city where I see a lot of clinical records.

When I first requested access to my file, I encountered the more or less standard assumptions. The therapist's immediate response was, of course, no, on the grounds that such things, first, would be detrimental, that is, upsetting to me to read, and, second, would be misunderstood by me in that they were medical records. I was told I would probably not understand the diagnostic terms and would mistakenly interpret these in a pejorative sense.

In fact, my clinical records, and most of the ones I have seen, contain very little that could be called medical terminology. They are not like a surgeon's comments to another surgeon about the details of exactly how she cut out your appendix. The language of psychiatric records is not generally difficult to understand; it is like everyday English. It is unfortunately like



everyday English in some respects. As a one-time teaching assistant in English, I have to wonder whether some clinicians' urge to restrict access to records is not about their desire to conceal an utterly abysmal command of English grammar and syntax.

One finds little gems such as "The symbolism of this was reflected back to this but it is understandable that she cannot accept this at this particular time so that it was natural that she denied this." That is one sentence, as devoid of internal punctuation as of good sense. In all seriousness, it sometimes seems that a great deal of time and attention has not gone into the preparation of materials which often follow a person for years, from hospital to hospital, to outpatient clinic, to housing program, to rehabilitation program, etc. Obviously, the care given to the preparation of records differs from institution to institution and from clinician to clinician, and I do not mean to suggest that all clinicians are sloppy.

As for the assertion that simply reading about oneself in clinical records will necessarily be traumatic, I have a couple of things to say. It is distressing to find oneself talked about in records as some kind of distasteful, malfunctioning, aberrant thing. It is dehumanizing and it is degrading. This tone of contempt, disgust and condescension pervades many clinical records I have read, not merely parts of my own. There is nothing clinical at all about this kind of judgement. It is upsetting and it is objectionable, but it is the problem of the clinician, not the patient, that some records are written in this style.

4:50 p.m.

The main reason I was told that reading my records would be emotionally harmful to me was that the records were about terribly painful times in my life. In fact, when I saw them, I found that seeing other people's accounts of these times really does not have any substance or impact on me at all compared to my own memories. Feeling so bad that you do not want to be alive sometimes, feeling out of touch, feeling that you live in a very frightening and distorted world are upsetting experiences. Some professional's words about this state seem pretty tame and bland in comparison to what it feels like to live in that kind of pain.

The assertion that patients are bound to be upset by reading their records seems to spring from a belief that those of us who have ever been locked up in a psychiatric institution are somehow permanently crazy and enfeebled and that we need to be sheltered from doctors' harsh words and the harsh realities of our craziness. That is paternalistic nonsense.

What bothered me most, when I actually read my records, were the errors, omissions and distortions contained in them. I want to talk briefly about each of these problems.

Errors are absolutely multitudinous. To give you one trivial example I found, an early psychiatric record from one hospital described me as, "A computer researcher who has had a number of jobs since completing her education." This quite considerable misstatement of both my occupation and my employment history appears again later in the clinical records of another hospital where my history is given, and I am described using the exact same words. It is evidence that the error was transferred from one set of records to another at a different institution.

Even such simple, factual details as the names and dosages of drugs may

be wrong. In my discharge summary from one hospital, drug doses are recorded incorrectly about 50 per cent of the time they are mentioned. It is interesting to me to note that the error is always on the side of understating the amount of the drug I was given.

As for omissions, I read my complete outpatient clinic file for two and a half years of regular weekly, or more frequent, visits and discovered it contained not one reference to violence. The fact that I had been quite severely emotionally and physically abused by a partner for some months immediately before seeking psychiatric treatment for the first time in my life was nowhere considered sufficiently significant even to be noted in passing.

There are many examples of what I call distortions. To give but a simple one, I ask you to consider the difference in implication between, "These problems seemingly subsided until more recently, during the last few years, when she has had some admissions to such and such hospital," and, "These problems seemingly subsided until more recently, during the last seven months, when she has had two admissions to such and such hospital." The suggestion of chronicity conveyed in the first sentence, the one that appears in my file, disappears when the vague phrases "few years" and "some admissions" are replaced with an accurate descriptive.

I personally do not intend to have any further contact with institutional psychiatry, so presumably my records will languish in the hospital files and the data banks and not circulate in the community. None the less, it is a continuing source of irritation to me that this kind of information remains on record unamended and it purports to be about me. I have no opportunity to comment within such files about their inaccuracies and incompleteness.

I work in a group home for women who have been in psychiatric institutions. I have seen and heard many times how in a lot of agencies and institutions, clinical records are treated as bits of gospel truth. They are not only believed, they are assumed to be more accurate than personal reporting. I have heard things like, "She says no, but her clinical records say yes." Files are considered more credible than crazy people. If there is a dispute, the file is assumed to be correct.

Where I work, we keep two sets of files. The closed files contain the psychiatric records and other material we receive about women, which we are forbidden to show them. Our own notes and records about women who live in our house are open to the woman involved. Residents have not only the right to read but also to add to and to comment upon their in-house file. We encourage women to talk about what they have read in their files and to express any comments or concerns about it. There has never been a serious problem with this procedure. There have been occasional hard feelings and misunderstandings, but these have always been resolved quite easily.

We believe it can be actively beneficial to residents to see and to read how staff perceive them and incidents in their lives. I believe strongly it was actively beneficial for me to read my clinical records. Certainly it was not the traumatic and potentially devastating experience I was encouraged to believe it would be.

For too long, psychiatric records have been considered the property of the hospital or the clinician and none of the patient's business at all. This is unreasonable. People should have access to documents about them, including the right to amend erroneous material. As a group, psychiatric patients and



ex-patients have often been considered incompetent, unreliable and sometimes potentially dangerous; in short, less than full adult citizens of this society who have or have had serious problems. In my opinion, to continue to deny us lawful access to our clinical records is to perpetuate this kind of prejudice.

Ms. Gigantes: I appreciate the presentation very much and I would like to thank you.

Can I ask you one further question about the setting in which you work and the way you handle files in that setting? Do you think it is of any assistance to staff?

Ms. Horley: I think it assists us sometimes to work out our subjective irritations, shortcomings, clinical judgements or significant facts about someone who lives in the house. There is a considerable difference. Those who write in those files are human beings and sometimes feel overworked and overstressed. When you know someone has the potential to read what you write, you write it honestly, carefully and caringly.

Ms. Gigantes: If we had a test which said disclosure of files might present serious emotional harm to the patient, former patient or a third party, do you think that would be too wide?

Ms. Horley: Certainly I was told it would be emotionally harmful for me to see my file. I do not believe that was so. I think the issue is who is making this decision about what would be emotionally harmful to another person, what appeal there is.

Ms. Gigantes: How did you get access?

Ms. Horley: In the first case, after a lot of talking, I was able to convince a therapist to show me her clinical file. I do not really want to comment on how I got the bulk of the material I have because I do not want to get anyone into trouble.

Ms. Gigantes: What about serious emotional harm to a third party?

5 p.m.

Ms. Horley: I understand there would be a concern about comments included in clinical records that related to a third party or material included that had been given to the writers of records by a third party. I think there is some legitimacy in restricting that somewhat. That is unusual. I have not read a lot of records that include this kind of material. The risk has to be demonstrable and tangible. Saying, "this person might get upset if he finds out that so and so said such and such about him," is just not good enough.

Mr. Chairman: Thank you for appearing before us today. We will take your concerns into consideration.

The next witness is from Riley Information Services, Tom Riley. This is exhibit 90. All right, Tom, you can proceed.

TOM B. RILEY

Mr. Riley: Thank you very much for allowing me to appear this afternoon to make a few brief comments on Bill 34. I speak from the

perspective of one who has been a lobbyist in the 1970s, an observer and writer on access-to-information and privacy laws for more than a decade and now a user of legislation both here in Canada and in the United States.

From that perspective, I would like to say first that, on the whole, this bill is quite a forward step and it will mean a lot to the people of Ontario to be granted this right of access to information. However, having said that, I would like to point out what I see as some administrative problems and differing points of view on the mechanics of the legislation itself.

The first issue I would like to address is the question of appeals. The question of appeals is one that has come up inevitably in every jurisdiction I have ever studied or been involved in. The degree of debate would include volumes upon volumes on what has been said on this, if it was ever put together, starting back with the Swedish legislation from 1766 up to this piece of legislation, and, as you are aware, what went on at the federal level.

There is a key question which is at stake here; that is, that I believe personally that the thrust of any access legislation or privacy act is the right of the individual to have an appeal to an independent body.

In this bill, I understand we have the proposed information and privacy commissioner, but from reading all the transcripts and the debate on this so far and the subsequent amendment which I have recently received, I can see there is still, not confusion--it is definitely being clarified--but perhaps differing points of view on what constitutes a good appeal. Under the bill as it is written, clause 45(a) makes it very clear that the head has the discretion to withhold documents in 10 of the 12 exemptions. The other two do not matter because they are mandatory.

Also, I see with these amendments the discretion also exists under the privacy section of the act, which is indeed interesting.

This is a very complicated problem, especially for us nonlawyers trying to grapple with these very complex legal issues. In my mind, it comes down to this: There should be a right to exist outside the head, the political or the administrative process. This is what we are looking at, even though it is not mentioned in this bill; for a discretion to be made to release records.

As it stands now, the information commissioner will be very limited in the power to release information. I believe this discretion should be changed, and a set of criteria needs to be set out in the legislation by which the commissioner would be able to make a decision where he would be able to override that discretion under certain circumstances.

You might have heard there was a recent federal court case where Associate Chief Justice Jerome did say that once the discretion of the head has been exercised, the courts cannot go behind him. However, my reading of a number of appeals in the United States has been that in early cases, there were situations in which the courts said the discretion could not be overturned; later, however, it was. We will see what will happen in the federal court here. The point is, under this legislation, this could never come about. Neither the information and privacy commissioner nor a court of law will have this ability.

Again, as a nonlawyer, my understanding of the Judicial Review Procedure Act is that the courts will only be able to look at this from the point of



view of facts and procedures--in other words, a point of law. In judicial review--as it exists under the Access to Information and Privacy Acts, and under the Freedom of Information Act in the United States and other jurisdictions--the courts can go behind decisions.

This is fundamental to release. We all know that when it comes to disclosure, any person--being human, whether he or she be an official or a politician--is going to err in withholding information. It is self-evident from looking at human nature.

That is why these mechanisms become crucial and important, and are set out in the beginning. I have no doubts that, at the start, the person who is named information and privacy commissioner will be one who--in the light of the spirit of this assembly in enacting this legislation--is very much in favour of access and wishes to see the release of as much information as possible as allowed under this law.

Apart from allowing that the burden of proof as to why information should be withheld is on the government, this law does not actually set out a spirit of openness, in my opinion. There is a phrase which exists in section 2 of both the Access to Information and Privacy Acts that makes it very clear that the thrust of the legislation is to grant the request, or access to information, except within very narrow limits.

Interestingly enough, in many decisions--I think there were four--Mr. Justice Jerome has actually referred to that section in overriding particular cases dealing with third-party confidentiality, as well as a recent case involving the Department of Employment and Immigration in which the records of a Philippine woman seeking citizenship in Canada were released.

Those are just some short examples of the efficacy of this type of mechanism in a law, and I do not think I can stress it strongly enough. Having said that, however, I will move on.

The next section I wanted to address is the question of costs. This is the second issue that raises hackles and a lot of heated debate in many jurisdictions. I have yet to be involved in any jurisdiction where this does not come up.

It is a particularly interesting point in these days of fiscal restraint, as I mentioned in my brief to you, because governments are very conscious of burgeoning national and provincial deficits. They are conscious of the taxpayers' dollars and wanting to balance the budget, things that are indeed very important. So the question of fees comes up: "we have access legislation. A good way to cover the cost of this is to charge fees." In theory, this sounds correct. It is a way to raise money.

However, when you analyse the situation, a different kind of scenario starts to evolve. Again, I am not just talking about Canada; I am talking about wherever this piece of legislation has been enacted in many jurisdictions. I just wanted to make a small point on this.

Much is made about how much this is going to cost to administer. We have already heard figures at the federal level about possible sums of \$9 million a year. In the United States, we hear figures of \$47 million to \$50 million-plus a year as each year goes by.

However, one has to put this into perspective. For example, it costs \$48

million a year for the marching bands of marines in the United States. Freedom of information costs for 1983 came to \$47 million. In the same year, \$1 billion-plus was spent on public relations programs--those wonderful programs through which the government of the day proceeds to tell us what we should know about the wonderful things it is doing for us, and the essential programs it is providing for its citizens. It is probably more like \$1.5 billion.

5:10 p.m.

Contrasting that to the \$47 million for the administration of the Freedom of Information Act raises very important questions. What price democracy? What price freedom? On balance, the cost of the right of access is minimal, but opening to the individual the access to topical records and to personal files is an incomparable right in human rights terms. There has been a move in this amended act, which I just received, to narrow this question of cost. There are certain provisions: financial hardship, public health and safety and a couple of others.

Again, there is discretion. I am not saying this will occur, but it does open the way to possible discrimination in the future. In many cases, including my own, an individual requester has been faced with a rather large bill and said, "Do I really want this information?" or "How am I going to get the money for this information?"

If I were a large corporation--and there have been large corporations under the federal act that have not been loath to pay \$3,000 or \$4,000 to get the information they want--it is just another business or other expense. They have the funds and feel they can go ahead, because it is worth paying the money. I know some firms that have made requests have not minded paying to go through the whole access request, because they are told that if somebody else comes and tries to get their records, they are going to be very well protected. In America, 65 per cent to 70 per cent of requesters have been from the corporate world.

On balance, with the arguments I have raised, for the amount of money that is actually collected, it would be fair for all concerned--so we all have equal access, because in these days of equal rights, we should look at this piece of legislation as an act that is applicable to all citizenry. Charging reasonable photocopying costs and costs of duplication of computer tapes, microfiche or microfilm is fair enough and would strengthen this legislation.

I also want to raise the question of time. Time is a difficult question. Under the American Freedom of Information Act you are allowed 10 days; under the federal act it is 30 days. I suggest a specific time limit of 20 days in this proposed bill, for a very simple reason.

There are times when very simple requests are made. If someone wants to take his time, my experience has been that I have had to wait the full 30 days to be told officials are now exercising their discretion and, "Will you please wait another 60 days?" At the end of the 60 days I am told, "You will please wait 30 days." If in the beginning there were this restriction of a 20-day time limit I do not think it would hurt anybody because of these other provisions, under which there are rights to extend the time limits. On that point, there should be some specific limits set for these extensions. They are not mentioned here.

I have two other points before ending. One is on the privacy section. I am very happy to see the right of privacy is being extended. I am also pleased



that one of the amendments has been to extend the powers of the commissioner to conduct studies on the implications of privacy and the principles of this act. It is a point that Mr. Sterling pushed quite heavily when he was the minister, and that is very important.

It is necessary in these times, when it appears there is no will in government circles to enact privacy regulations for the private sector, that there be some kind of signal from government that it is concerned. We are living in a period of a microelectronic revolution, as I have said at many times in many different forums, whose impact we all feel whether we like it or not.

Someone once said: "Nobody really cares about his privacy. It is not really an issue today." Tell that to some person who has had a problem of his privacy being violated through a misuse of his record, wilful misinformation, wrong information, disinformation--a few names of different types of wrong information that can be in a file. To that person there is no such thing as "Privacy is not an issue." It is an issue. When we ignore the rights of the few, we are impinging on the rights of all of us. It is very important that this has been added and that there is such a strong signal.

In line with those comments, an important feature of the federal Privacy Act is the whole question of audits of personal data banks. The Privacy Commissioner has the right to spot audit, to go into any government department and to determine whether that department is maintaining the principles of privacy--the fair information practices, as many people dub them--set out in that legislation. Those principles are very similar to those set out in this proposed bill.

It is important that this commissioner have the same power to go in to conduct these audits, because that is the way we are going to determine that the privacy principles of this legislation are being kept. The federal Privacy Commissioner has already gone in and found there have been violations by large departments--administrative, malfeasance or whatever--and he has been able to make recommendations in his reports to Parliament and to that department.

On a last note, one of the most important features of any piece of legislation, and one I have found that has been omitted in all pieces of legislation, is the question of education. It harks back to the comment I made about public relations programs. This is one where I will beat the drum for a public relations program. In this instance, it is important that people know about this right.

If you are in Toronto or Ottawa and you are a union, an association, a public interest group, a professional user, a corporation or a large legal firm, you are going to know about this law. Many clients or you personally will be interested in this piece of legislation, and you are therefore going to educate yourself.

If you are somebody in Timmins, Sudbury, Thunder Bay or Wawa, you are not necessarily going to know about this legislation, yet the privacy aspect is going to be extremely important, as is the freedom of information side. This will tend to be used by public interest researchers, public interest groups, businesses and the like. On the privacy side--it is very important, and there is no provision--that becomes then a question of when this act is enacted if the government of the day decides it is going to make a point of educating the public on it.

When the federal act was proclaimed and the two ministers responsible for guidelines and policy had their press conference, someone got up and asked, "What are you going to do to publicize this law?" They said, "We just did and now it is your job." That was at a press conference. Fair enough; they did publicize it. They did make it, scored a few points that day and were on the 11 o'clock news. They did not make the Journal, but they were on the national news. The point was made for that day, but beyond that; not a lot came to be known about the federal law, apart from the work of the two commissioners and some work of Treasury Board.

That is the last point I will make. I have gone on for quite a long time, and I know you want to ask some questions. I do want to thank you for allowing me to come today.

Mr. Sterling: As members may know, I have had many occasions to meet and talk with Mr. Riley at various conferences. He helped me to organize a major conference on privacy in 1984. Mr. Riley, I want to thank you for putting your thoughts down for us because of your past experience, both from the institutional side and from the private side of the fence. We have had a very good look at the question of privacy.

The area that is most important for us to address when we come to the amending of the bill--and I am not satisfied yet with what the Attorney General (Mr. Scott) has put forward on it--is the appeals section. From reading the recommendations in your submission, you basically want an adoption of the Williams model. Is that correct?

Mr. Riley: That is correct. To clarify that, which I did not do in my opening comments, I suggest that because of the nature of this office and the powers given to this person, consideration be given to a commission similar to that of Quebec, since information and privacy will be a tremendous amount for one person to handle, even with an assistant. I also stress in the recommendation that there be an explicit statement concerning a final appeal to the courts. As I said, this is just a disagreement on the kind of appeal this will be.

5:20 p.m.

Mr. Sterling: Under this act, the information commissioner is given the power to make an order. He does not make a recommendation; he makes an order. Do you believe he should make an order or a recommendation?

Mr. Riley: If there were going to be no appeal to the courts, he should definitely be making an order. If there were going to be an appeal to the courts, a recommendation would be acceptable.

I note that one strong feature of this, the mediation role, is a role the federal commissioners decided to take for themselves. It is an interpretation to have ombudsman-like features to go out and mediate. I am sure Mr. Rubin will have comments on this. Many will say that is not sufficient.

The problem is that you are going to have one person. As I tried to mention in my brief, my consideration and concern about allowing one person is that even though in the beginning you may have someone who has the flavour of openness, is an idealist and wants to see openness, I am concerned about the future. As I mentioned in the brief, legislation is written for tomorrow and tomorrow and generations after that. As we all know, when you try to change a



piece of legislation, good luck. If you have a person in there who becomes or in time could become politicized--in these days of minority governments, this may not be a question, but in the later days of majority governments, the situation changes. I am trying to address political realities. In that instance, having a person with that sole responsibility to disclose could be very bad.

Mr. Sterling: Under this bill, the access seeker goes to the information commissioner, who then hands it down to mediation. Then it comes back up to him. Which route do you suggest, that the information commissioner become the mediator? Does it go to a group of commissioners after that, or to three other people?

Mr. Riley: No. Either you have an information commissioner or you have a commission. The mediation role is an extension of the role of the information commissioner. I do not have a lot of problem with the wording. Even if that mediation is not there, any person in office who interprets legislation or anybody with common sense will try to mediate it first. It is a question of wording.

One possible danger if you say there will be mediation first is that you could end up with an extension of time, as I mentioned. I went through one request process to get a report on urea formaldehyde, and it took the sum total of a year. That is why I am very sensitive to these kinds of mechanisms. The mediation may be redundant; perhaps the information commissioner should go right into an investigation. If he chooses to mediate at that level and can work it out, fine. On reflection, it might be better to take it out altogether. He can mediate if he wants to, but if that does not get anywhere, he should go ahead and make some form of recommendation. That is just a time problem.

Mr. Sterling: First, I agree there should be an appeal. I do not care who the information commissioner is and what his motives are; he can be wrong, regardless of those motives. There should be an appeal process in any kind of good situation.

The Attorney General explained there would be judicial review of the decision, but I would assume a plaintiff would not be able to attack a decision on the facts of the case; he would be dealing with it on points of law.

Mr. Riley: I am not a lawyer, but that is my understanding. My gut feeling on this is that with a judicial review, you are going to develop a body of case law. Earlier, I tried to give the example of the discretion and the way in which the Federal Court has been interpreting some of the cases under the Access to Information Act and under the Privacy Act. It seems to be erring on the side of openness. In this case, there is going to be no interpretation; it is going to stop cold. Because of 10 of the 12 exemptions, there is not confusion with discretion, but the question of discretion raises very serious problems in the appeal process.

Mr. Sterling: Do you like the federal system of review?

Mr. Riley: Yes, I like it, and it has proved to be quite effective. It not only works here but also has worked in Australia; it has proved to be quite effective there.

Again, the philosophy behind it, as I was involved in this back in the mid-1970s, was a very simple one. It was very clear you were not going to get

it directly to the courts under our parliamentary system of government. It was thought a commissioner would have the right to go and play this role we have mentioned here today of arbiter, mediator, an ombudsman-like role or what have you, and this would resolve 95 per cent of the cases. They may not be resolving the cases as the requester might like; they are certainly resolving cases in terms of not having to go directly to the courts.

Any problems one has with the information commissioner under the act falls within the ambit of the powers. Are they sufficient? Is the person doing the job sufficiently or whatever? That is another matter. With respect to the mechanics of the legislation, I prefer, for that reason, to try to resolve the majority of these cases at a fundamental level, which is the first step of appeal.

Mr. Sterling: I believe the New Democratic Party and our party will vote through that kind of amendment. I hope they will support it. I believe that was the indication from Ms. Gigantes, when she spoke on second reading of this. Assuming that will take place, what I want to do is to try to formulate the best role for the information commissioner. Should he make an order or a recommendation? I believe if he makes an order, it will take away his or her right to be an advocate on the part of the requester, which, of course, we have seen in the federal situation.

Mr. Riley: I think he should have the right to recommend. If there is that final appeal to the courts, the judicial review, it should be a right of recommendation, for the simple reason that he can be an advocate for the citizen or he can just be an advocate for openness. Therefore, there is an argument for the government, and there is an argument for the citizen making the request. It will not put him or her in the position of having to take such a hard-nosed approach.

When you have the order to disclose, you could become someone who is banging on the desk and saying, "You are to release this." Perhaps you want to develop a relationship with the officials who will have to administer this legislation. They are the ones who are going to have the tough jobs. You will have people within the bureaucracy itself who will be in favour of openness and want to see the act work, and they will have to contend with those uneducated officials who can talk about it at retirement parties in 20 years, but we have to contend with the next 20 years. They are going to have to live with the fact that they do not like this legislation.

When this act was first introduced, I said you have two stages of legislation. You have the political role, which we have seen here in the past eight to nine months. Then you have the bureaucratic role, and that is another matter. There is another fight ahead. If you have the judicial review, I would come down in favour of recommending first and then going to the courts.

Mr. Sterling: I have one more question. What have you got against marching bands?

Mr. Riley: Nothing, but I do not like them, and Marines hate to release their information.

Mr. Sterling: I could ask many more questions.

Mr. Chairman: I know you could.

Ms. Gigantes: I will leave that one and turn to another point you raised very strongly, the whole question of audits and personal data banks.



Mr. Riley: Yes.

Ms. Gigantes: When I look at the amendment proposed to subsection 55(d) by the Attorney General, we have a change from wording that said "the commissioner may...(d) engage in or commission research into issues affecting the purposes of this act" to the proposed "(d) engage in or commission research into matters affecting the carrying out of the purposes of this act." I do not see a substantial difference there. When I look at that, it is pretty loose phraseology; it does not seem to me we are making it part of the responsibility of the commissioner to do what you have asked for.

When I look at the powers of the commissioner as they are noted in inquiry, there is no cross-reference between section 55, "the commissioner may," and all those complete powers given to the commissioner in subsection 48(4) to produce documents and all that jazz. Has the ministry given any thought to how those are supposed to interrelate? What powers does the commissioner have when he may engage in or commission research? I can engage in and commission research into matters affecting the carrying out of the purposes of this act, but if the commissioner does not have more power in doing that than I do, that is going to be a great help. What power does he have when he is doing that?

5:30 p.m.

Mr. McCann: The best answer I can give is that in clause 55(d) there is no power of subpoena or production of documents. Clause 55(d) was not intended to give those sorts of powers to the commissioner; it was intended to be a research power, to grant the power to commission studies, etc. It was not contemplated that it would require a subpoena or production of evidence.

Ms. Gigantes: Clause 55(d) is definitely not what Mr. Riley is looking for, which would be, first, a responsibility placed with the commissioner to audit personal data banks and, second, the power as granted to the commissioner.

Mr. McCann: I do not think clause 55(d) provides for a power of the commissioner to audit ministries' compliance.

Ms. Gigantes: It looks singularly weak, and I thank you for helping us identify that.

Mr. Riley: Thank you. I thought it did, which is why I mentioned it today. I went over this very carefully yesterday after receiving this and said, "Hey, this is the point I had raised earlier in my brief."

Mr. Chairman: Are there any other questions? Okay; thank you very much.

The next witness before the committee is Ken Rubin. These are exhibits 62 and 88.

KEN RUBIN

Mr. Rubin: Thank you, Mr. Chairman. I have been called an exhibit before, and here I am.

My comments about Bill 34 are from the perspective of a public interest researcher, a user of government information and an author of many access and

privacy reports. I have been told that I filed the first access request in Ontario under the spirit of the act. I wanted to know about the implementation plans for this act. I do not think these things should be done behind closed doors.

Unfortunately, this application, which is dated April 4, has not been dealt with, but I did get a call on Monday saying it may be dealt with in the future. I hope this is not what is going to happen, because I intend to file a lot of applications and open up this government. I do not think what is going on with Suncor, with nuclear safety at Ontario Hydro plants or with the stadium deal, and I could go on and on, is going to be accessible under this act. That is why I want to see this act changed.

Despite the claims made and the suggested changes, Bill 34 is not the most progressive access bill around and, in fact, is badly flawed. While it contains a significant public interest override notion to exemptions and attempts to spell out in some detail a balance between privacy protection and the public's right to know, it is a pretty mediocre bill.

You have heard a lot about the first-tier and second-tier levels. I agree with most of the critics in the opposition parties. The Attorney General has not straightened this mess out. Section 51a of the revised bill is just not sufficient--please excuse the handwritten notes with this brief; I just received the revised bill yesterday--because it does not establish the full-scale de novo review process.

I have been in Federal Court on eight occasions when some of those were going on. I have had enough experience to teach me that if I want the help and I want to appeal, I want a commissioner or judges who are going to help me and be on my side to the extent possible.

Because exemptions are drafted so broadly, if you leave the discussion in the hands of the bad departments--and there are bad federal departments that I have dealt with over the years in trying to get information. In Ontario, there are ministries that want to keep their information secret and those that want to have it released. If you remove the discretion and there are inconsistencies, God help us. In fact, I did a report for Southam News Services that looked at 12 federal departments. Lo and behold, there were 20 Ontario agencies, most of the federal agencies and all their agricultural marketing boards and what have you that were responsible to the same minister. They all made claims for confidentiality and all wanted to see the status quo retained in the documentation I viewed. In the briefs presented to the federal review that is going on now, every province except Ontario, Quebec and New Brunswick has made submissions.

They have all said: "We want the status quo. You keep your turf and we will keep ours, but we prefer secrecy." Nova Scotia even went so far as to say: "We have an act, but it is not as good as the federal act. You are embarrassing us." This kind of stuff has to stop.

You will notice I am not reading straight from the notes here. There is a bit from the heart and a little intellectual input here today.

Some of the exemptions also concern me, but I should mention that I believe the good former Liberal member, Mr. Breithaupt, had the right idea when he proposed two tribunals: a fair information practice tribunal and a data protection authority.



One person cannot possibly handle--certainly there is a conflict between the information side and the privacy side. There are too many people in this province, on the privacy side in particular but also on the access side, to handle the caseload properly, do the audits, litigation and mediation of complaints in a sufficient fashion. Not only should the functions be separate and apart, but you also have to give them those kinds of functions.

I have had problems where the commissioner has not decided one way but the courts have; I want the option to go either way. I want both parties to have the right to order, but I want those courts to have the full-scale de novo review, and that is not implicit in this bill. I do not want to have to go in front of the court and argue like a lawyer, which I am not, some inane points of law. I appreciate some of those are important, but the rights of the citizen to access are more important.

The exemptions are part of the problem because they are still too broadly drafted. I look at the cabinet confidences and have gone over this very bitterly with federal officials. I have probably applied for more accessible cabinet confidences than anybody else in Canada. I see this inane thing, having looked at records that are 20 years old and that should have been released 10 years or five years ago. There is nothing in them that is not publicly known, because the clerk of the committee who wrote to us has been told deliberately, "Do not put in any of the full and frank deliberations, which everybody is afraid will come out in the subcommittee or committee meeting minutes." I have seen there is not enough access in that regard.

I note with interest that the law enforcement provision is still broad, which I am sure the Ontario Provincial Police and others are happy about. An interesting feature is defined in section 2 of the revised bill; it is an interesting principle. I would like the other exemptions defined right up front, so that we can see where we are at in this country or in this province.

I also find, and I have made a comment to the effect, that under section 15 on intergovernmental relations, one government can whisper to another government, "Hey, I want secrecy." I do not like that provision in the mandatory sense that it is in. I feel it leads to the continuation of the old-boy secrecy network, which this bill is meant not to promote.

Policy advice is dealt with in this legislation in a more intelligent fashion than in the federal bill, because there is some definable quantity of information. Somebody has realized that bureaucrats should not be able to hide for at least 20 years, but the bill still has a lot of work to be done on it.

If I am going to take the knife after anybody, it is going to be the Attorney General (Mr. Scott) and the corporate community for lobbying and successfully revising this bill to ensure corporate interests are better protected than the rights of consumers or the rights of environmental groups. Sure, there is the public interest override notion, but they are trying to defeat that by making section 17 a mandatory type of exemption. They want to add in labour relations and a broadly defined new clause 17(1)(b) that substantially broadens the type of commercial information for which confidentiality can be claimed.

5:40 p.m.

I think they have the ear of the Attorney General, and we have not. We are here, I am here and I want to see the opposite. I have seen the federal legislation with the third-party notification system, reverse freedom of

information. The United States does not have it, although it is being lobbied like hell to introduce it. I do not want to see that kind of stuff here. I want to see stuff come out for which we have either paid or which we have the right to know because there are regulations, safety, health and other things at stake.

I feel very strongly about this. I am involved in some of the meat-packer cases where federally meat packers are trying to tell the courts and the country that government meat inspection reports are their private prerogative. They are claiming under the guise of this act that these things can be done. They are not going to get away with it all but under the act they can get away with part of it. I do not like to see an act where they can get away with anything like that.

As I said, I do like the public interest override but I find that it is being weakened. To be positive, and a little positiveness always helps, I noticed the Attorney General did introduce subsection 58(2) which says that "existing information practices should hold true." Mr. de Cotret, President of the Treasury Board, came in front of the committee a few weeks ago and said that 85 per cent of federal government information should fall under that category. A lot of it is government handouts and propaganda but, none the less, that is an important precedent.

As MPPs will find out, why are MPs having to use the Access to Information Act? Is there not an existing information channel? You will find that your other sources of information will dry up. I feel it is a very important activity which you are going to have to monitor and develop further. Everybody has been boxed into the act so this act is self-serving to that point.

Government institutions are incorporated into the act. I noticed there were a few omissions, such as hospitals, municipalities, school boards, quite a few agencies. I look forward to reading the study done by the Ministry of Treasury and Economics, that listed the 600 to 700 Ontario agencies, some of which are known. I am sure there are still a few that remain to be known. I see no reason they should not be; the Quebec bill is working well. It incorporates a lot of these agencies.

Procedurally, the Attorney General says I may have to pay \$10,000 to get certain information. I am known as a frequent broad user, not a frivolous user. Mr. Justice Jerome even said that to me in a court appearance. This guy wants to zap me. This bill wants to zap me. It is all hidden. It is in speeches and is in regulations, which have not been released.

I do not like that kind of stuff. I do not like discriminatory things such as shipping costs or unfair computer reproduction fees. I do not need certain things of that nature. I want to see that up front now, not later. That will act as a big deterrent.

I was talking to the Attorney General representatives beforehand. I am afraid I do not understand the English language, as written by lawyers because there is supposed to be a 30-day initial receipt. I wish to make that clear.

Let us change it to 15 days. Let us not let people use the full 30 days. That is the name of the game. As Mr. Riley said in Ottawa, "When in doubt, go the full 30 days." The time extensions under this bill can go on and on without penalties. I am advocating the changes that I submitted to the federal government in a review of committee, that there be penalties. Let us put some oomph into the time. Time delay is information denied, as they say.



Also, of course, there are not the provisions for public education. I have never used the access register but I notice you have a section 32. Keep department registers involved. Keep that whole idea involved because you are going to find that to get at the records and get the sufficient detail, you are going to need all the help you can get.

I have already touched on the fact that I am still awaiting a reply to the first request filed under the spirit of the act. I have also indicated that because the Attorney General said that it is a progressive bill, it should be a progressive bill, therefore it should include things such as open meetings of agricultural marketing boards; it should include a whistle-blowing provision.

You have a lot of civil servants; I remember a forestry official, a nuclear plant official, a lot of people, who had the courage and guts but did not get the backing of legislation. They need the backing of legislation in good faith in going to their superiors and trying to argue it out.

On the privacy side of the act I feel very strongly because it is equal if not more important. The bill has been tightened up to some extent because a lot of people have said, "My God, how are we going to administer this unbelievable definition of privacy here and this idea of how to keep the releases to third parties?" The balance is not quite there yet.

Certainly there are no audit functions, which there should be. There is some looseness there. I do not like the idea that federal-provincial computer matching can just go away without any safeguards, time limits, publication notices and all the rest. I do not like the fact that the individual does not have the right to sue for damages to penalize the individual responsible officials if there is inaccurate information on him. I do not like the idea that a lot of electronic monitoring of the work place is going on.

A lot of private sector concerns are not dealt with in this bill. We all know that those kinds of things should be put forward. I notice that the police chiefs, credit agencies and others have made submissions from the private sector, such as the hospitals, in a different sense. They all say, "It is not our problem; do not put us in the bill." I say put them in the bill so that our problems with privacy invasion are prevented and do not occur. I feel that the privacy side should be dealt with much more separately, which I also say in the review.

Now that I realize this committee has been renamed the standing committee on the Legislative Assembly, you have a role in this act under section 61 that says you are going to have to deal with this in three years. If you do not make the changes now, you are going to find yourselves faced with making them again. Let us all have a better deal now instead of having to wait all that time. I am open for questions.

Ms. Gigantes: I would like to pick up on two items. One is the amendment to subsection 12(1). You talked about your concern on matters that are called executive council information documents. Do you know what an executive council committee will cover?

Mr. Rudin: I do not know. I am not privy to that information. All I know is that federally you can route anything up towards cabinet and it may not even get there; but cabinet copies may not be accessible for 20 years.

Ms. Gigantes: What is the furthest extent of the use of that kind of restriction on access that you have heard of in Ottawa?

Mr. Rubin: I had a case where I claimed for urea formaldehyde foam insulation use in federal buildings. I am sure that UFFI was used in a lot of provincial buildings, including residences. The minister responsible for public works claimed that they were all cabinet confidences. He even certified it, which is all you can do federally. After I went to court, it turned out that there were hundreds of documents that were releasable. So there are potential abuses of the system.

The federal government is looking at the fact that if you sever the factual content from political documents, then you are at least taking a more reasonable stance on what is releasable and what is not. If you put yourself in the black box, if there is some sacred, mystical thing called "cabinet-responsible government," you are never going to have an access bill because those are the top decision-making records. If you cannot get at those, if you cannot find out what is happening through those records, then the rest of the bill falls in its credibility.

Ms. Gigantes: So consideration of cabinet confidentiality can extend right down the ladder to advice to government that is factual and technical.

Mr. Rubin: When in doubt, as they say, black it out. You can, if you are low down the chain, say, "Well, it is advice, and I am going to keep going up the chain." Or you can say, "It is going to cabinet and I will keep it up that chain." That is a little harder to do because there is a little more prestige associated with that arena. They are fairly wide open. With the policy advice, they put more limits on than they have with the cabinet confidences in Bill 34.

5:50 p.m.

Ms. Gigantes: May I ask you about clause 50(1)(a)? Perhaps you could go over your comments on that section again. That is the addition.

Mr. Rubin: I have dealt with agencies at the federal level that have used their discretion in a way that it is just a name. If the neighbouring agency can give me what really turns out to be factual documents, say on the political activities of the employees of the federal government, which was an issue here in Ontario too, the Public Service Commission could give me that, but Treasury Board will not. Treasury Board says: "Listen, I have the discretion. Section 21 in the federal act policy advises it is class exemption." It goes to the courts and the judge says, "If it falls under that category, sorry, there is nothing I can do about it." I think that is an unreasonable exercise of discretion. A judge or a commissioner should be able to really take a second hard look at that. That is what will make me feel that the act is workable if I have a feeling that one agency is denying me unreasonably, willfully almost, that type of material.

Ms. Gigantes: So what you are reading that clause to mean is that if I am a bureaucrat and I decide I can stretch an exemption area where I have discretion to say that I have the discretion and the discretion tells me no, I will not disclose, then the commissioner can do nothing?

Mr. Rubin: Empnatically, yes.

Mr. Chairman: Any other questions?

Mr. Sterling: I would like to make a comment. I do not know whether you are aware of it, Mr. Rubin, but the override section, in terms of



upholding existing information practices of the government, was contained in Bill 80, which I know had other problems for you. As far as that section is concerned, it was there before. There was an indication we would also move that kind of an amendment on second reading.

I will tell you a little anecdote about a question that I asked in Orders and Notices about some legal opinions of the Attorney General. His response was, "Those kinds of documents are not normally released." I did not find that an indication of a new, open government.

Bill 80 also contained some absolute maximums of time periods for a decision to come down, which will be necessary in this bill as well in that you have to put some outside time frames on the process from beginning to end. It puts the bureaucrats and the information commissioner, or whatever the process is, in a time squeeze. If someone is taking up more time than he necessarily needs, he is going to get heat from another part of the process.

Mr. Rubin: Time limits do not simply apply to the administration. They apply to the commissioner and to the courts. If you are going to have users such as myself satisfied throughout, and the system fair and working, you have to allow all the way up the chain for certain time limits or deterrents if they go past those limits. This is not a game. This is meant to provide information to the public.

As for the public-interest override idea, all I can tell you it is rarely invoked federally, where they have a provision. It is only in the commercial information area. In practice, the problem with a weak public-interest override or with an override which says administrative discretion is still the ultimate thing--we sort of said we will have judicial review, but we will take it back in a tricky legal fashion.

Mr. Chairman: Are there any other comments?

Ms. Gigantes: There is one other brief question which I had earlier. You said during your presentation that you did not have the same concern, or you implied you did not have the same concern, as was suggested by the discussion between Mr. Sterling and Mr. Riley. If a commissioner had the power to order, and there were also an open availability of court review, the commissioner would not then be an advocate.

Mr. Rubin: No, I do not. First of all, if the commission has powers of mediation, those get used before you use the stick, and they are not used that well federally now, in my opinion. You can resolve a lot of the cases at a certain level but if you have to go the whole route, you have to have the power.

What you are saying is: "I have the power. My advocacy is that I am going to show you how this act should be dealt with." I can use the word "advocacy" in many ways, as you can, but I hope I am using it in the way that means you can get the information released. If you have the enforcement powers to do it, you are much better off.

I also feel that the court has to have the power. I do not think it is a duplication of services. I have mentioned cases where I did not get satisfaction on one level, but did on another. Another provincial jurisdiction, New Brunswick, has a Right to Information Act, one of the older ones. You have the option of going to either the Ombudsman, the first-tier review, or the Federal Court.

You must have flexibility but you also must have some toughness to the review. I do not buy the theory that you just have to rely on good faith, that publicity and the deterrent effect will itself be good or that the Ombudsman will carry the day. That does not carry the day, from what I have seen in the tougher cases.

Sure, mediation is important. I have had better mediation in a lot of cases from Mr. Justice Jerome than I have had from Ms. Inger Hansen, but I have had to go all the way up to that level. A lot depends on the officials, but it is just the same as when I go to a company with a problem. We start by saying, "Will you solve it amicably?" If they do not want to do that, then I want the things in place to help me--perhaps not like the used car mechanisms they have in Ontario right now, but those mechanisms that are really tough on my behalf.

Mr. Chairman: Thank you very much. One other group is appearing this afternoon, the Facility Association. Donald McKay is the general manager and Robin Cumine is the legal counsel. Are they here? I think they just stepped outside, so we will get them back in. This is exhibit 103.

Just make yourselves comfortable, gentlemen, anywhere in front of a microphone. Our process is relatively straightforward. We want to give you the opportunity to make any kind of oral presentation you want. The committee has your written submission; that has been circulated. We generally give you an opportunity to introduce any new material or any statements you want to make; then members of the committee will have an opportunity to ask questions.

#### FACILITY ASSOCIATION

Mr. McKay: It has been a long day, and a not one. I am Donald McKay, the general manager. You saw both names on the presentation. This is Robin Cumine to my left. He is our legal counsel. On page 2 of our brief, we tell you who we are.

We are a legal entity formed under the Compulsory Automobile Insurance Act, Revised Statutes of Ontario 1980, chapter 83. We really operate as an underwriting pool to ensure that all licensed drivers can obtain automobile insurance.

There were 102 companies operating in Ontario in 1985. All of these companies support the Facility Association. They share in the assets, liabilities and operational costs, proportionate to how much business they do in Ontario.

It has not been a very profitable operation, because all we do is insure high-risk drivers. Since we began in October 1979, the total deficit has been \$164,833,000. That has been made up by the private insurance companies in proportion to the amount of insurance they write in Ontario. More recently, the deficits seem to have been getting larger, as I have indicated. In 1982 the deficit was \$14.9 million; in 1983, \$32.4 million; in 1984, \$44.3 million, and in 1985, \$39.8 million.

6 p.m.

In addition to ensuring availability of auto insurance to all owners and licensed drivers, we have--

Mr. Sterling: Are those payouts or are those contingent liabilities?



Mr. McKay: Those are over and above what we have paid out. That is the contingent liability of the insurance industry to the Facility Association.

Mr. Sterling: If you are sued for \$1 million, that means it goes on there on the deficit?

Mr. McKay: That is correct.

Mr. Sterling: These are not paid-out figures? The \$164 million has not been paid?

Mr. McKay: I would say that probably 80 per cent to 90 per cent of it has been paid, because in seven years you have an opportunity of catching up.

The idea of the Facility Association is to reduce the cost of the burden to the insurance industry, meet the requirement, and do this through the application of uniform rates and policies to all applicants for insurance.

We actually contract with 11 companies in Ontario to act as servicing carriers. Servicing carriers receive the applications from the brokers, endorse the policies, receive the premiums and adjust the claims on behalf of the association. They are reimbursed from the pool for losses paid and receive an allowance for adjusting claims. They receive a fee for policy handling. We are proud to say the Facility Association is very cost-efficient. Our internal administration costs are about one per cent, but they are going down; that is, for \$92 million that we received in premiums in Ontario in 1985, \$922,000 went for administrative costs. That is largely data processing costs, rent and salaries.

The guarantee of market availability to all owners and licensed drivers is achieved by assigning each registered insurance broker to a particular servicing carrier. Generally, the broker's choice of servicing carrier is granted and is typically a company using a marketing technique familiar to the broker. For example, all the Co-operators' agents are assigned to the Co-operators. They act as a Facility Association carrier for us and look after that part of the business. All of Allstate's agents go with Allstate. Independent brokers go with one of the other independent companies, such as Royal, Commercial Union and so on. The way we have it laid out; every broker in Ontario has a contract with us and any applicant who wishes automobile insurance and has access to any kind of broker, whether he is a direct-writing salesman, through a credit union or any other way, has access to the Facility Association.

Uniformity of rating treatment is provided by distributing the manual of rates and rules to all brokers and servicing carriers by the Facility Association. Rates are prepared and promulgated in accordance with the requirements of the Compulsory Automobile Insurance Act, RSO 1980, chapter 83, section 10.

Coverages available are such as to ensure the availability of automobile insurance as required by law. Maximum limits of \$1 million inclusive for third-party liability are allowed, but higher limits will be provided when required by Canadian federal or provincial statute, by regulations issued under the authority thereof, or by municipal bylaws.

The Facility Association has undertaken to permit limits for third-party liability of up to US\$5 million to permit special filing requirements for the

United States' Interstate Commerce Commission. Collision and other physical damage perils are written subject to deductibles and accident benefits are allowed to the extent they are prescribed by statute.

I would like to talk a little bit about who comes here, because we are getting into the part that I think is of concern to you in connection with this bill. Within the private passenger automobile class of business, applicants are directed to the Facility Association mainly because of lack of driving experience, poor accident records or extensive conviction records relating to motor vehicle operation or a combination of any or all of the three principal characteristics.

The most recent statistics available, for 1984, indicate that 33.61 per cent of Facility Association applicants lacked driving experience as compared to only 14.03 per cent for the total industry. Similarly, only 28.79 per cent of Facility Association applicants are reported to be five years claim free, while 80.79 per cent of all drivers are shown to be five years claim free, and 10.13 per cent of Facility Association applicants have experienced a claim within the preceding year, while only 2.01 per cent of all drivers report a claim within the preceding year.

The same driver characteristics that direct applicants to the Facility Association have a significant effect on the severity of claims. This is illustrated in the following table indicating the dramatic difference between the average loss cost per car insured in the Facility Association as compared to the average loss cost per car insured for the total auto insurance industry in Ontario. This is just for third-party liability because that is our major consideration.

You will see in your presentation the table showing that in the Facility Association from 1980 to 1984 the loss costs per car insured each year were \$618.77, \$613.26, \$591.87, \$680.48 and \$849.75, respectively, while in the industry they were \$158.83, \$180.67, \$182.49, \$209.06 and \$255.02, respectively, for the same years.

We believe the preceding synopsis of the characteristics of the Facility Association market illustrates that there is a significant amount of high-risk business in the association and that there is also a significantly higher percentage of drivers insured through the Facility Association who have had recent accidents and convictions than is the case in the voluntary market.

I want to talk a little bit about the act. The Compulsory Automobile Insurance Act makes it mandatory that automobile insurance be provided through the Facility Association to everyone who wishes it, and it is therefore not open to the Facility Association to reject any applicant. The act is further designed to ensure that the premiums charged with respect to business placed through the Facility Association are established on a fair and equitable basis. To this end, section 10 of the act provides that any rates intended to be charged by the Facility Association must be submitted to and approved by the superintendent of insurance for Ontario.

It has been made clear in recent years by the office of the superintendent that driving records and experience are indeed factors that should play a significant role in establishing the appropriate premium to assign to an individual risk and that individuals with bad driving records should be required to pay premiums at a level appropriate to the risk they represent as a class. To do otherwise would result in those with better driving records paying higher premiums than might be appropriate.



Thus, it is of great concern to the Facility Association that an applicant's driving record may no longer be available to us. It is currently our custom to order a driving record abstract on all applicants and drivers of vehicles submitted for insurance. These are ordered through the Ministry of Transportation and Communications. The table that follows in the brief indicates the amount spent with MTC to obtain these abstracts in recent years. You see there that each year from 1982 to 1985 we spent \$756,000, \$1,226,000, \$745,000 and \$918,000, respectively.

There has been some kind of breakdown at MTC. Whereas we used to be able to get these things in 10 days, it is now taking us 72 days, so if anyone is connected with MTC, he might find out what happened.

Furthermore, the superintendent of insurance for Ontario requires that we enter the policyholder's conviction record into the superintendent's statistical plan in order to provide statistical data concerning an individual's driving conviction record.

The superintendent's statistical plan is statutory. We have no alternative but to enter that information. Full entry of this information commenced in January 1985. Prior to that it was on an ad hoc basis, but it is now compulsory. When sufficient data have been collected to provide credible information, it is hoped that we will be in a position to provide a credible correlation between the relativity of convictions to accidents as well as a relationship to the costs involved.

The information contained in driving record abstracts is essential to the Facility Association in order to permit it to meet its legislative obligations, and any delay in or impediment to obtaining the information might well result in a lack of fairness towards other members of the driving public. Every application made to the Facility Association contains the phrase: "The applicant acknowledges that...reports containing personal, credit, factual, investigative or driver record information may be sought in connection with the application for insurance or renewal, extension or variation thereof."

This is a common phrase and it appears in all applications for automobile insurance. It is required by the act.

Conclusions: We support the general principles and purposes underlying Bill 34. However, without amendment, this act will impair the effectiveness of the arrangement established pursuant to the Compulsory Automobile Insurance Act, Revised Statutes of Ontario, 1980, chapter 83.

6:10 p.m.

We would draw the committee's attention to the comments of the Ontario Task Force on Insurance, contained in the final report of May 1986, pages 118 and 119:

"The task force is convinced that incentives for good behaviour and penalties or deterrents for bad behaviour should be a part of the auto insurance system. These should involve the implementation of a bonus-malus system, safe driving campaigns, better safety standards and equipment and stricter Criminal Code sanctions, and also changes to an integrated database relating to driver claims histories and conviction records, and to permit insurers to have access to this information on an on-line basis. Accordingly, the task force recommends that:

"C.5: In conjunction with the introduction of a new system of personal injury compensation, the government of Ontario should work with the insurance industry on an urgent basis to enhance the deterrent to hazardous driving, and to implement an effective bonus-malus system for setting automobile premium rates. At the same time, the Attorneys General of both Ontario and Canada should be strongly encouraged to continue their efforts to ensure more appropriate criminal penalties in respect of unsafe driving.

"C.6: To ensure the effectiveness of the bonus-malus system, the government of Ontario should work with the industry to devise a plan to create an integrated database to provide drivers' claims histories, conviction records and driving experience, and explore how to make this essential information available on an on-line basis.

The task force has gone into considerable detail in its report in handling this subject, and more particularly as it affects the Facility Association, and you are no doubt very familiar with that.

We respectfully suggest it is not appropriate at this time to cover all the detail, but we recommend that in its deliberations the committee take the report of the task force into consideration. We therefore submit that the committee recommend that the necessary steps be taken either to amend the proposed legislation so that it clearly allows access to driver record abstracts for automobile insurers and the Facility Association, or to make specific provision in the Insurance Act of Ontario or under the Compulsory Automobile Insurance Act to authorize and direct disclosure of the information contained in the driver record abstracts, pursuant to clause 21(1)(b) of the draft bill.

Finally, we bring to the committee's attention the fact that the Facility Association conducts its business in seven jurisdictions in Canada. Provision is available in all jurisdictions for the access of driver record information. Alberta recently made its information available in machine-readable form and in this respect has caused the agreement attached as exhibit 1 to be executed. I refer the agreement to you for your information, as it may be of interest to know what is going on in another province. In Newfoundland, we get the records on microfiche. There are arrangements in other provinces.

Ms. Gigantes: Thank you for the presentation. It is essentially the same kind of presentation we had from the Insurance Bureau of Canada. I think Mr. Cumine was part of that.

Mr. Cumine: I was not here when it was made.

Ms. Gigantes: Your face looks very familiar. I cannot figure out where I have met you before.

Mr. Cumine: I have one of those familiar faces. It is eminently forgettable.

Ms. Gigantes: I have one of those bad memories.

In our discussions with the Insurance Bureau of Canada, one of the things we talked about was why this bill is going to present a problem for you. It has to do with the release of personal information, which under the bill you would have a right to if you have the permission of the person who is to you a third party.



Can you explain to me again why that is so difficult?

Mr. McKay: It is really not that difficult. We have the permission of all applicants. However, in a household there may be four drivers; for example, a mother and father and two children. We want to get the driver abstracts for the members of the household who are regular drivers, but who are not signatories to the application. We therefore have to have a little broader access through the bill than saying, "If I have your permission."

It is not practical for us to have an application from each member of the household. We have to look at the practical application of it. That is the only stumbling block as far as we are concerned. We are in the position where we have a signed application from everyone. A lot of the industry is not in that position.

Ms. Gigantes: Would it not be possible to have a signed application in which the applicant takes the onus for giving permission?

Mr. McKay: We do not have any control over the application. It is a statutory form directed by the superintendent of insurance.

Ms. Gigantes: If we change the form for you, would that work administratively?

Mr. McKay: I am sure if you changed the form it would probably work, but the way they work, it would take about two years to change the form. No offence.

Ms. Gigantes: That is another kind of problem. May I ask the ministry staff whether in their view it would present problems to have a form giving one person in the family, the applicant, signing responsibility in the application for insurance for the release of the driving abstracts of other persons in the family who would be driving the car? Would that present problems as the bill currently stands?

Mr. McKay: I think it would, in that the bill treats every individual as having a unique and specific privacy interest and it is not a question of a parent being able to consent on behalf of a child or one spouse on behalf of another and so on. The driver would have to undertake to get the written consents of all the people in question, which might be feasible but would present the sort of practical difficulties that the witness is talking about.

Ms. Gigantes: But he did not raise any practical difficulties, because he did not deal with that question.

Mr. McKay: In any event, let me say that the bill does not treat the family as a unit. It treats individuals as having a--

Ms. Gigantes: I understand what you are saying. Would it present any practical difficulties if you had the form?

Mr. McKay: Yes, I think it would be quite impractical to try to get four people to sign an application. It could create all kinds of problems if someone were away at university or someone were not home, or if someone simply decided he did not want to sign it. We really need all the information.

Ms. Gigantes: what you are saying is that if somebody decides he

does not want to sign the application and have information on the driving abstracts released, you would nevertheless request that we say the abstracts should be released.

Mr. McKay: That is correct. It is public information. It is for the good of the public, not for the good of the insurance company. If I have someone with three impaired driving convictions and seven tickets, which is not at all unusual in our business, there should be an appropriate penalty attached to that insurance policy, even if it happens to be the son who drives the car 50 per cent of the time.

Mr. Cumine: The other aspect of it is that, from both a fairness point of view and a transaction cost point of view, the Facility Association has been directed, and part of its underlying purpose is, to try to make sure the appropriate premium assessment is made. We are being directed more and more to take into consideration true driving record and to keep transaction costs down.

If the procedure is such that there is a long delay in getting the true information, it can frustrate that end. If you have to chase around, agents being what they are and individuals being what they are, trying to get four, five or six signatures on an application, the cost of each individual transaction can be dramatically escalated, therefore frustrating the very purposes we are trying--

Ms. Gigantes: You use agents in the Facility Association?

Mr. McKay: Or brokers. They may be agents. Agents are company employees, such as Co-operators employees, who sell for the Co-operators General Insurance Co. Brokers are independent brokers who contract with several companies to sell their products. They may be either who are coming to us.

Ms. Gigantes: It seems to me that if a member of a family is going to be able to drive a car that is insured for driving by another member of the family, that person is, in effect, an applicant on the insurance.

Mr. McKay: The policy says all persons who drive with the owner's consent, so I--

Mr. Cumine: They are certainly an insured.

Mr. McKay: They are an insured, yes.

Mr. Cumine: There is no question about that. They are an insured. You could get into the sort of situation where the father might not even know that his son, who is away at university for part of the year, has had three impaired driving convictions in Kingston but comes home to drive the family car for the summer.

6:20 p.m.

Mr. Chairman: May I ask a little question here? One of the things that has crossed my mind is that there is a certain part of the whole insurance industry that is a little loose. That is, if I make an application for coverage, the agent generally asks, "Who drives the car regularly?" I make a statement to the effect that "I do, my wife does and my one son, who is going to school here, drives occasionally on the weekends and my daughter, who



will be home from school and will drive during the summer." We all informally assess who is a regular driver and who drives once in a while. Whether I lend my car regularly is not really asked.

To me, the net effect is that I am insured if my brother comes to visit me and borrows the car to go to the corner. If we move to a consent system, where each individual who drove the car had to sign an application to allow you to get driver information, which has a certain attraction for me, would we be complicating things to the point where an insurance company would say, "If we do not have a signed consent to get your driver information, you are not insured," so that the occasional driver who might borrow my car to go shopping would not be insured and the son or daughter who came home to visit, was not named and did not have a consent signature in front of the company's nose would be considered not to be insured?

In other words, would we reverse the whole situation so that you would be insuring only me or anyone else in my family who had signed that application and voluntarily given you access to our driving records? Would that be a likely scenario?

Mr. McKay: I can answer this, and Robin will probably give you the legal side. It would fly right in the face of the Compulsory Automobile Insurance Act, because the idea of the compulsory insurance act is to make sure there is no automobile out there that might get into trouble such that some innocent person would suffer because there was no insurance in effect.

I do not think it would be practical. What we are trying to do is to say, "If you are hit, somebody is going to respond to that claim." If you flew in the face of that by saying, "If you are hit, I am sorry, you are not insured, because we do not have a form from you," that would get the insurance industry into a lot of trouble.

Mr. Chairman: I reason I pursue this is that I happen to have a constituent who got into much the same kind of jackpot over who owns the car and who had the insurance policy. A subsequent claim was made against the policy. The insurance company honoured the claim initially and then said: "But we are cutting our losses and you are no longer insured. We do not want your business any more. Goodbye." Yet the claim against the constituent continues.

Mr. Cumine: That person may not have been insured by that company any more, but he was insured by Facility Association within a week. That is the sort of thing that happens, and it is why it is important for us to know how to rate those situations properly.

To go back to the question that was asked about not being insured, the act itself at this point stipulates what the policy covers. The policy is going to provide coverage on an unassailable basis, from a third-party point of view, for everybody who drives the vehicle with permission, whether he has signed an application or whatever group he is in. There have been some recent decisions which say that if you have done something improper in not disclosing information and that sort of thing, the company may have a right to look back to you in certain areas, such as denying the collision damage claim or something of that sort. However, in terms of paying the claim of the third party, the insurer has no option. It is there.

Mr. Chairman: So we would create a problem if we went to the system where we wanted--

We have talked about this before; that is why we are pursuing it. Our concern is about an insurance company, for example, getting access to driver information that may be inaccurate because the public has some difficulty correcting it. We have all dealt with the Ministry of Transportation and Communications computers and we all know there are mistakes on record. The mistakes do get transmitted to insurance companies, police reports, a lot of people.

Maybe one way is to have each person to say, "Yes, you can have access to that information, and I will sign a form or change the form." It now occurs to me that we may create more problems than we resolve.

Mr. McKay: I think you could. I would mention that, in Newfoundland, where we seem to be very much involved in the taxicab business, the brokers have a unique system. If you come as a taxi owner and apply for insurance, they say: "First go to the Department of Transportation, get your motor vehicle abstract and bring it to us. Then we will talk to you." That might work in St. John's, Newfoundland, but if we had a couple of hundred thousand people lined up at Downsview looking for abstracts, we would have quite a problem trying to process the paper.

The way the industry does it now--you are probably quite familiar with it--is that we get deposits and then run them out. We really wish you would go the way of Alberta, where we sign a contract, we have a terminal, we look at it there and that is the end of it. If the applicant who receives the policy finds out we have surcharged him 30 per cent because he has had several speeding tickets or whatever, if that is on his policy and if he does not agree that this information is properly on his record, then he will certainly let us know, and let us know in no uncertain terms, that he does not intend to pay it because those are not his tickets. That is not really a problem, when it goes from the insurance company or the Facility Association to the applicant in the form of a policy, and it has recorded, "This is the amount of your surcharge and this is why," if he does not know about those things.

As an interesting sidelight on this, we were talking recently with an organization that is doing some investigation on the accuracy of these things. It did a pretty good sampling and it found that 28 per cent of the applications received by four insurance companies it reviewed failed to contain previous accident and conviction records.

Of course, I am not even sure when I got my last speeding ticket. You may not be; maybe you do not get them. But it is not one of those great occasions that you remember, and I suppose people do quite genuinely forget them. Sometimes they forget them as a convenience.

Mr. Chairman: Thank you very much, gentlemen. We stand adjourned until next Wednesday. I remind you again that we will go at the appointments in the public sector first and then we have three more groups that want to appear on Bill 34.

Mr. Warner: Is that the end of the submissions?

Mr. Chairman: Yes. Just for your information, because we have run through the list of people who have said they want to appear, we are trying to contact a few other groups we have been unable to get hold of. Essentially, we are saying that next week is the end of the public hearings. Then we have another set of problems to deal with.

The committee adjourned at 6:27 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

APPOINTMENTS IN PUBLIC SECTOR

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, JUNE 4, 1986





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

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Johnson, J. M. (Wellington-Dufferin-Peel PC)

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Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Gigantes, E. (Ottawa Centre NDP) for Mr. Martel

Clerk: Forsyth, S.

Clerk pro tem: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Flaherty, D. H.

From the Ministry of the Attorney General:

McCann, S. B., Counsel, Policy Development Division

From the Ontario Association of Chiefs of Police:

Hamilton, R. E., Chief of Police, Hamilton-Wentworth Regional Police

Garswood, J. F., Inspector, Investigation Division, Freedom of Information  
Study Committee, Windsor Police

Marks, J., Chief of Police, Metropolitan Toronto Police

From the Standing Committee on the Ombudsman:

Philip, E. T., Chairman, Subcommittee on Bill 34 (Etobicoke NDP)

Bell, J., Counsel; with Shibley, Righton and McCutcheon

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, June 4, 1986

The committee met at 3:57 p.m. in room 228.

SIMULTANEOUS TRANSLATION  
(continued)

Mr. Chairman: We have a quorum. I hope you have with you the formal report on simultaneous interpretation. I want you to have a look at it because it is no different than the report that was adopted, but it is in a somewhat different shape and form. I do not believe we need a second motion to adopt it, however, I thought you should be able to take a look at it, since it has been printed up in a somewhat different fashion than the report you saw last week. I will table it with you so you have it for information purposes.

APPOINTMENTS IN THE PUBLIC SECTOR

Mr. Chairman: The first item of business today is to move on the final report on appointments in the public sector. A couple of members did as requested. They got hold of Mr. Eichmanis last week with notice they had some suggestions for change. Mr. Eichmanis has drafted those and you will have a copy on your desks or will get one shortly. As we go through this exercise today, you can have another kick at the cat, so to speak.

What is on the table now is the motion that was moved last week by Mr. Newman to adopt the report. We can go through it section by section or deal with the amendments and then with the report as a whole. What is your pleasure?

Mr. Martel: Why do we not just deal with what people have objections to, rather than go through the entire report? I am sure everybody has had an opportunity to read it. We can deal with the sections to which we might have some objection.

Mr. Chairman: Is it agreeable to proceed that way? Okay. Mr. Treleaven's suggestion was on recommendation 13, on page 26. It is essentially a wording change. He would strike the words "10 sitting days" and substitute "a maximum of another 30 days." There is not a great deal of difference there. I suppose it would cover certain periods when the House is not in session and things of that nature. If it is your pleasure to consider this as an amendment, someone will have to move it. Then we could debate it or do whatever you want.

Mr. Sterling moves that recommendation 13 be changed, deleting the words "10 sitting days" and substituting "a maximum of another 30 days."

Is there any discussion on the matter?

Mr. Martel: Has anybody bothered to calculate what that means? Are we now talking about 90 days?

Mr. Chairman: No. It would be 60 days.

Mr. Martel: It says "...of another 30 days," though.



Mr. Sterling: It means 30 days for the committee to decide to review and then 30 days to make its recommendation.

Mr. Martel: Instead of 10.

Mr. Chairman: Ten sitting days is actually a 14-day period under normal circumstances. There would be occasions when you would not have 10 sitting days at the end of a session, at the beginning of a session or during a recess period. It is simply a matter of changing the wording. It extends the time period to include another two weeks--a week to two weeks. Is there any further discussion or are there questions about it?

Mr. Sterling: I did discuss this with Mr. Eichmanis. On the time period, it is basically what premise or mandate we give the appointee before the committee reports. This report says the member may sit on the committee, the advisory board, the agency or whatever, as if he were already there. I do not agree with that.

I would move to change the report in that regard. My feeling is that he should be considered an ex-officio member of a board or whatever but he does not have the right to vote or act as a normal board member. If that is the case, then as far as the time periods are concerned, I would also suggest that if the reviewing committee, or whatever agency we are dealing with, decided it was not going to review an appointment, then as soon as that decision was made, for example, if it was considered on the 15th day, that individual would then become a member of whatever agency so that he would not have to wait 60 days.

Mr. Martel: Is there an average length of time that the people who are appointed to committees know ahead of time? In other words, the point that bothered me as I reviewed the report is the one Mr. Sterling raised; the person thinks he can take his place until such time. That seems to be a crazy way of doing business. Somebody goes and sits on a committee and then finds out that he is not officially acceptable. It seems to me to be nuts. It just does not wash. Imagine coming down here for two meetings during that 60-day period--

Mr. Chairman: Let me interrupt for a second. The premise that we based it on was that there would be a notice tabled in the Legislature that 60 days from now this appointment will be made to this agency. In that time frame, the person is not on the agency yet but a notice has been given. It is like a notice-of-motion technique that is being proposed.

Mr. Martel: I must have misread this then because I am convinced I read that the man or woman would come down here and he or she could serve for a time while the committee reviewed it. He or she would not have voting rights, but at the end of that 60 days if that person did not get the nod of the committee, then he or she would be removed. I am sure I read that in here last night.

Mr. Chairman: On page 22 is the section where we attempted to deal with this problem. The notice is tabled.

Mr. Martel: This is what it says.

"While the person appointed would not be able to take up his or her position legally until 60 days had elapsed, the committee sees no impediment to the person taking up his or her appointment on an interim basis once the

order in council has been tabled in the House. The committee envisages that legislative review of a particular appointment would be a rare occurrence."

Now is my concern, that the person can come down here--It would be an embarrassment to me if I were selected and I came down in good faith. That has to be changed somehow so that when a person starts to sit he or she is not faced with the possible embarrassment of being turfed off after the fact. He should not be allowed to sit. Let us drop that.

Mr. Chairman: Can I ask your thoughts on how you would deal with the matter? Are you saying he would not be allowed to participate in any way on the agency until the 60-day period had elapsed?

Mr. Martel: Until he had been approved.

Mr. Sterling: I would not be quite as strict as Mr. Martel. I would just say he cannot either be paid or participate as an official member of that committee.

Mr. Martel: In essence, that is what I am suggesting.

Mr. Chairman: You are suggesting he could have observer status or something such as that.

Mr. Sterling: He would be ex officio.

Mr. Chairman: The difficulty comes about with the differences in agencies. Some agencies would be regulatory in nature. On day one, a person who was going to be appointed in 60 days would be asked to cast a vote on regulating the horse-racing industry or something such as that. It would be a particularly sensitive point whether that person was legally on the agency.

Mr. Sterling: That is right.

Mr. Chairman: On a number of other agencies such as the Royal Ontario Museum, it would depend on what business it was doing at the time. If it was simply saying what kind of displays it will have in the following year, I suppose it would not make any difference. If the agency was letting a contract for the building of an extension or something similar, you would cause some legal problems by having someone whose status was questionable.

Mr. Sterling: The whole process becomes a farce until the recommendation by the--Mr. Martel is not correct in one way. This committee or this report in no way gives a committee of the Legislature the luxury of excluding an appointment.

Mr. Martel: I did not say that.

Mr. Sterling: I think that is what you said in your initial remarks.

Mr. Martel: What I meant was that it is going to come before the committee. By tacit approval, we will not say anything, we will not review it if we think the appointment is okay. We do not have any veto and I understand that as well.

My concern is just how embarrassing it would be for someone to come here, or anywhere, for one or a couple of meetings, and then find out that somebody was looking at it. As we said in the report, it is our hope that the



government would want to make a different selection, rather than being perhaps ultimately embarrassed by it if it could not get an approval. It worries me to have that person think he is on a committee and make his public appearance and be asked about it. Then he could be totally embarrassed by not ultimately getting the final approval from even the cabinet itself because a committee said, "wait a minute, look at Mr. Jones, he is not very satisfactory." That is all it is going to say.

Mr. Chairman: Let us get back up a bit here. Let me deal with the amendment that has been proposed first. If we go back and delete some things, it might be the simplest way to do it.

The motion is that in recommendation 13 you would delete "10 sitting days" and substitute "a maximum of another 30 days". Is there any further discussion on it?

All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Do you want to go back to page 22 in the text? I suggest it is simplest to delete the first sentence. Is that the motion?

Mr. Sterling: For what?

Mr. Chairman: On page 22 we would be deleting the sentence, "While the person appointed would not be able to take up his or her position legally until 60 days had elapsed, the committee sees no impediment to that person taking up his or her appointment...."

Mr. Sterling: I was going to delete the last sentence of recommendation 8.

Mr. Sterling: Therefore, we would do both.

Mr. Sterling: Yes.

Mr. Chairman: The motion by Mr. Martel is to delete the first sentence in the paragraph. I will read it for you. It is on page 22. It is the beginning of the first paragraph. It is the sentence, "While the person appointed would not be able to take up his or her position legally..." down to the word "House".

I have a second motion from Mr. Sterling to delete the last sentence of the recommendation.

Those in favour of Mr. Martel's motion to delete that first sentence?

Motion agreed to.

4:10 p.m.

Mr. Sterling: There are two things I want to say with regard to recommendation 8: that such orders in council not take effect until 60 days have elapsed from the date of tabling or until the committee has decided or made an affirmative decision with regard to the matter. I do not know what the words would be. If the committee decides it does not want to review, fine. The guy or girl--woman--can be on the--

Mr. Chairman: You are in big trouble already. When in doubt, say "person." That always gets you off the hook.

Mr. Sterling: I said "guy" too.

Mr. Chairman: Okay. Let me help you out here. The motion from Mr. Sterling would be to delete the last sentence of recommendation 8, "This procedure would not prevent appointees..." and add the words "from the date of tabling" or "the committee's review has been concluded."

Ms. Gigantes: What if it decides not to review?

Mr. Martel: That means we have reviewed it anyway.

Mr. Chairman: The review may be simply not to review.

Mr. Martel: That is correct.

Ms. Gigantes: Until the committee has made a final determination.

Mr. Chairman: Or the appropriate committee has made its report?

Mr. Eichmanis: Just to be absolutely clear, you must remember that the question of the committee decision not to review, in of itself, does not mean the person is automatically on the committee. That information has to be conveyed to the cabinet which will make the new order in council immediately appointing that person to the committee. There must be some sort of wording in there to tie it in with the Cabinet Office.

Mr. Martel: If you just said "until the committee's review," that is all our responsibility is.

Mr. Eichmanis: Then at least in the text indicate that the committee understands that it is not--

Mr. Chairman: Let us do it that way. The motion is to delete the last sentence in recommendation 8 and in the text of the report we will clarify.

Mr. Newman: What page?

Mr. Chairman: Page 22, recommendation 8.

Mr. Sterling: This is an important recommendation in terms of what happens in the end, if they accept it.

Mr. Chairman: -Yes.

Mr. Sterling: I do not think a new order in council is necessary.

Mr. Chairman: No.

Mr. Sterling: What the order in council has to say is it appoints Jane Doe to such-and-such a commission, such order to take effect in 60 days or when the legislative committee--

Mr. Chairman: Could I make a suggestion here?



Essentially, the appointment is to take effect 60 days from now. We have provided that time frame in which a committee could review such an appointment. Is there any necessity to go any further than that. The government has stated its intention that on October 1, this person goes on this agency. Committees can do whatever they want. They do not need to appoint them before then. They may not want to do that. Why do we not just leave it? Is that a reasonable way to proceed?

Mr. Bossy: That summary clause, which says, "To summarize, once a decision has been made--"

Mr. Sterling: Mr. Chairman, there is something very important politically in allowing flexibility in the time span. The only tool that a committee will have will be delay. If, for instance, a minister says, "I want Joe Doe appointed to such-and-such a board, and it is urgent that it be done," it gives the committee some power to deal with it on the first day or the 59th day. Then you will get the political interaction which we desire in this process. Does that make sense to you?

Mr. Chairman: Would that not be an unusual circumstance where the minister would say, "Normally, it would be 60 days from now, but I need this appointment this week." He would then go off to the committee and the committee would say yes or no?

Mr. Sterling: Look at our police commissions now. They are so slow with their appointments at this stage of the game--

Mr. Chairman: Let me back up and try it again. I have a motion from Mr. Sterling to delete the last sentence of recommendation 8. Do you have any more that you want added to it?

Mr. Sterling: Why not deal with that motion first? Then I will put up another motion.

Mr. Chairman: Okay. The motion is to delete the last sentence of recommendation 8, "This procedure would not prevent appointees...."

Those in favour of that motion.

Those opposed.

Motion agreed to.

Mr. Chairman: Mr. Sterling, do you want to set that down and write up something?

Mr. Sterling: Let me work on something.

Mr. Chairman: Let me go through Mr. Sterling's other comments. He had six points that are on this handout. Do all members have this? It is on your desk, in front of your face.

First, "All deputy ministers and all appointees who receive some remuneration, irrespective of whether they are order-in-council appointments or not, should be reviewed by the appropriate standing committee."

The only comment I would make before we start is that this is not within our terms of reference. The terms of reference is specific that it is only

orders in council. I do not know whether someone will raise this when we table the report, but I thought I should point it out to you. The order in council is part of a reference. If we go beyond that, we will be leaving ourselves a little vulnerable to someone saying it is not within our terms of reference.

Mr. Sterling: Having reviewed the process in the United States, I feel the most important appointees, which the Senate committee likes to deal with, are the undersecretaries. It likes to talk to them about what their ideas are about the ministries or departments they are heading. I think a committee in the Legislature should have the opportunity to talk to the individuals who are being appointed. It has been the practice of the government that the deputy ministers are responsible to the Premier as opposed to the minister. The minister does not get the choice to pick his or her deputy. Therefore, this process would be fruitful.

Second, concerning the appointments that are made by a minister as opposed to by order in council, I have no objection to anybody who is basically serving for no compensation perhaps or expenses being paid. However, when a minister is mandated under an act to appoint somebody and pay that individual, there is really no difference between an order-in-council appointment and a minister's appointee, other than that an act has chosen one route over the other. It does not make any difference. Therefore, those individuals should also come under the purview of the same process.

Mr. Chairman: Okay. Whether it is within our jurisdiction or not, I will put the question to you. Mr. Sterling has moved item 1:

"All deputy ministers and all appointees who receive some remuneration, irrespective of whether they are order-in-council appointments or not, should be reviewed by the appropriate standing committee."

Those in favour of that motion?

Mr. Martel: May I ask a question before we go on? I do not know what he is telling me. Is he saying that the committee should look at whether a deputy minister should be appointed or not?

Mr. Chairman: Yes. I am trying to pre-warn you that this is beyond the committee's mandate.

Mr. Martel: Whether it is the mandate or not, I am not sure we have the prerogative to-- The appointment of deputies has been primarily the prerogative of the Premier over many years, as I understand it. Even ministers do not get to make their own appointments. They are set.

Mr. Chairman: Are you saying yes or no to his proposal?

Mr. Martel: I am saying no.

Mr. Chairman: All right.

Mr. Bossy: Just to get something clear here, it says "all appointees who receive some remuneration." There is a smaller group where there is a per diem on every appointee as you go through and there are groups where there is none. If we refer these for review to the appropriate committees they may fall under--whatever ministry, committees, agencies or boards--we are going to have a process of a committee doing nothing but reviewing appointees.



Mr. Chairman: It is a problem, yes; there is no question about it.

Mr. Bossy: I have a hard time with this, and I am sure others in the caucus have the same problem. If there is some serious appointment, it should be reviewed. But I am afraid we could get bogged down in doing nothing else in committees but reviewing appointees.

Mr. Chairman: Any further comment on this motion?

4:20 p.m.

Mr. Sterling: Mr. Martel says this is a prerogative of the Premier, but when you look at every order in council, that is the prerogative of the Premier as well. Therefore, when you look to an individual who is suddenly employed as Deputy Minister of Industry, Trade and Technology, how do the members of the Legislature learn about the philosophy of that individual, where he is coming from, where he is going and what his ideas are in dealing with his ministry? How do we get to know who these individuals are? I would use the process for that.

Mr. Martel: However, there is a problem. Let us be frank. The government will hire deputy ministers who are going to reflect the political philosophies of the government of the day. It is not going to give a good god damn whether he is a socialist or a Tory at this point. Regardless of who is in power, he is going to try to get deputies who reflect his political bent or philosophy. A government has to have that at its disposal.

The Liberals are making a mistake today. They have a bunch of hacks and flacks left over who are still not on their side. They have not realized it yet. They should fire a whole bunch of them.

Mr. Chairman: Let me try to put the question. We have a motion, item 1 on your report from John Eichmanis, that "all deputy ministers and all appointees" et al. Are you ready for the question?

Those in favour?

Mr. Sterling: Can we split it into two and do the deputy ministers first? There may be a difference.

Mr. Chairman: I will accede to your wishes. I will put it in this manner: that all deputy ministers should be reviewed by the appropriate standing committee. Those in favour? Those opposed?

Motion negatived.

Mr. Chairman: On the motion regarding all other appointees, those in favour?

Mr. Martel: Who are we talking about when we say "all others?"

Mr. Chairman: In the middle of putting a question, it is a little difficult to respond to you.

Mr. Sterling: There are about 800.

Mr. Chairman: It means all appointees, anybody else.

Mr. Warner: You are in the middle of a vote, Mr. Chairman.

Mr. Chairman: Yes. All those in favour of Mr. Sterling's motion? Those opposed?

Motion negatived.

Mr. Sterling: I cannot believe you guys, protecting appointees.

Mr. Chairman: Item 2 is on page 17. The recommendation is that "The government of Ontario at the beginning of each calendar year advertise an invitation to the public to apply for public sector appointments."

You may recall that we wrestled with how to make people aware that there were such things. We did not want to see a huge advertising program undertaken all the time, but we felt it would be appropriate to notify the public once a year that appointments are made in the public sector, what they are and where to get more information about them.

Mr. Sterling moves that recommendation 2 should be deleted.

Is there any discussion on it?

Mr. Warner: It is connected with number three. He wants to replace it with having the agencies do it, and that is the purpose of it.

Mr. Sterling: I believe this ad will appear on page 38 in the Globe and Mail and will be of such a nature that it will not be read by many people. It will cost \$50,000 or \$60,000 to do all that, and I do not think it will twig anybody's imagination.

My thoughts are that each agency should be required to produce some kind of material, a pamphlet or whatever, showing how one becomes a member of that particular board or whatever it is and the construction of the board, so that people who are interested could then have something more substantial in terms of the direction in which they are going. It is a method of advertising one way or the other. I think the \$50,000 will go down the tubes.

Mr. Warner: Did we indicate that information on the number of agencies and which ones they are, etc., would be listed in the public libraries or some such place?

Mr. Chairman: Yes, they would be gazetted and put in the libraries and news reports.

Mr. Warner: Therefore, one could assume that a government ad--

Mr. Chairman: It would be akin to a formal notice, such as the Ontario Municipal Board does when it has a hearing. Mr. Sterling is probably right; I envisage it as an annual ad in a newspaper, probably in something such as the Globe.

Mr. Warner: I am somewhat attracted to the idea of doing it agency by agency.

Mr. Chairman: Then instead of one ad, every agency would put in an ad.



Mr. Warner: You would have hundreds of ads. Right.

Mr. Chairman: Are you ready for the question?

Mr. Martel: In various parts of the province.

Mr. Sterling: I was not talking about the ads. I was saying that an agency--for instance, a conservation authority--would have to produce a brochure that would say, "The conservation authority comprises representatives from 58 municipalities and three provincial appointees."

Mr. Warner: Why could it not do that anyway?

Mr. Sterling: It can, but it is not required to.

Mr. Warner: Why delete number two?

Mr. Sterling: You are going to blow \$50,000 on a general ad that says everybody in the public can apply to be appointed to an agency; board or commission of Ontario. That is great, but it is not going to be specific.

Mr. Warner: The ad could direct you to the local library where all the agencies and their descriptions are listed. I can see an ad such as that. It seems to me a heck of a lot cheaper and maybe more effective.

Mr. Sterling: Let us have the vote.

Mr. J. M. Johnson: I want to make a comment. If it is conservation authorities, there is no damned use in advertising for Toronto all across the province.

Mr. Chairman: Excuse me. That is not the intention here. The intention is that once a year the Ontario government would notify the people of Ontario that there are agencies to which the government makes appointments. It would not identify all the agencies. It would simply make people aware, much as right now the federal government is making people aware there is a census under way.

Mr. J. M. Johnson: I thought your suggestion was that the local conservation authority would make people aware of it in the local area.

Mr. Warner: I do not know why you cannot do both.

Mr. Sterling: I would not require them to advertise. This is a general--

Mr. Chairman: This is a notice.

Mr. Sterling: Let us vote on it. It is not a big issue with me.

Mr. Martel: I am trying to get a handle on what you are saying to me.

Mr. Sterling: I am saying that the Ontario government, by taking out a general ad each year on January 2, 3, 4 or whatever it is, saying you can be appointed to an agency, ain't going to have any impact on anybody, in my humble opinion, and we are going to blow \$50,000.

Mr. Chairman: All right. Are you ready for the question?

Mr. Martel: No. Wait a second.

Mr. Chairman: I am mindful that we have about an hour to go through these.

Mr. Martel: He is onto a point. When the ad is in the Globe and Mail or the Toronto Star, many of the good people of Oshawa will get it. The good burghers in Noelville or Alban will never see it.

Mr. Bossy: Contact your local MPP.

Mr. Warner: It does not say the Toronto Star. What are you talking about?

Mr. Chairman: Are you ready for the question?

Mr. Martel: That is the point I am trying to make for you.

Mr. Chairman: Are you ready for the question? If you would stop arguing among yourselves, maybe we could do some business here.

Those in favour of Mr. Sterling's motion that recommendation 2 should be deleted?

Those opposed?

Motion negatived.

Mr. Chairman: Mr. Sterling moves that the text of the report should indicate that each agency provide an information brochure on the functions of the agency, the requirements for appointment to the agency and how individuals can apply for an appointment to the agency.

I thought we had done that, but I have no objection to inserting it in the text of the report if that clarifies it.

Mr. Warner: I thought we had included it as well, but it is a good suggestion.

Mr. Chairman: Would that be good enough? Are we agreed on that?

Motion agreed to.

Mr. Chairman: Mr. Sterling moves that recommendation 9 should include the fact that committees may delegate the review of appointments to subcommittees.

That can be done whether we put it in this report or not. Where any matter is properly before a committee of the Legislature, the committee has a right to strike a subcommittee for any purpose it wants. The question is whether you want to put it in here.

Mr. Sterling: If we are dealing with a great number of appointments in a committee over time and if it is August, I would be more than happy to allow one member from my party to meet with one member of each of the other parties. If they decided they were going to--



Mr. Chairman: Could you take the friendly suggestion that we insert this in the text of the report rather than as part of the recommendation?

Mr. Sterling: I would like it to become a part of the process in terms of giving the committee the right to delegate.

Mr. Chairman: The committee has the right to delegate. That is not in question.

Mr. Warner: It is stating the obvious, so you can put it in the recommendation if you want. It is already traditional under our role.

Mr. Chairman: Which way would you like us to deal with this?

Mr. Sterling: How is the appointment process going to-- If the subcommittee makes a decision that it is not going to review, I want it to be a decision that does not have to come back to the committee as a general rule before it becomes the law.

4:30 p.m.

Mr. Chairman: Those provisions will be covered by the standing orders where it provides for the striking of a subcommittee to carry on the committee's business. If you want to clarify it, there are two ways to do it. We can insert it into the text, which, in my mind--

Mr. Sterling: I will leave it to whatever way Mr. Eichmanis thinks is best to get it to the standing orders.

Mr. Chairman: Are we agreed to insert that into the text of the report rather than into the recommendations? Okay.

"5. The text preceding recommendation 12 should state that where committees have access to the personal files of an appointee, it is the duty of legislators to keep personal information confidential."

I would have no problem in putting that into the text of the report, because it is obviously more than this. You have an obligation under your oath of taking office not to reveal information that comes to you by way of your position. Perhaps it is fair to serve that as a warning. Is there any objection to inserting this in the text? Are we agreed to do that? Okay.

The last point raised by Mr. Sterling is, "with respect to the section dealing with appointments made during an election period, the text should make clear that any appointments made prior to an election, but which a committee was not able to review, could be reviewed after an election." Do you wish to elaborate? I thought we had covered that.

Mr. Sterling: We started dealing with the period leading up to or during the writ period. The problem was that you could not strike a committee during the writ period. Once the writ had been dropped, you had 37 days, in whatever stage you were in during the approval process. Therefore, we said we should let the process go on during the writ period. Our federal brothers appointed 12 or 13 people near the end of the parliamentary process, and those people should be reviewed. I think they should be reviewed regardless.

The only stipulation I would make is that the review would come 60 days after parliament was called again. The process would have to start again, and

the committees could not forestall it for ever. It would prevent a government which saw that the writing was on the wall from making a lot of indiscriminate appointments.

Mr. Chairman: Do you think we need some clarification on this? I thought it was fairly clear. There is a slippage in here that Mr. Sterling has identified. Up to the point the writs are issued, we have committees. When the writs are issued, there are no committees to review. We have made it clear we would not like governments to make appointments in that time. We provided a mechanism whereby there is no need to make appointments. We have not prevented them from doing so. I would be interested in the precise words that could be put together for us that would nail this down even more tightly than it is.

Mr. Sterling: We could take out recommendations 17 and 18 and say that any appointments, either preceding or during an election period, would have to be reviewed.

Mr. Martel: Recommendation 18 covers your concern. It says that no new appointments can be made from the time the writs are issued until the election is over, and you hold over and continue for three months so that the new government makes the appointments, not the old government.

Mr. Chairman: We attempted to say that once the writs were issued, no more appointments could be made and everybody else was continued for a three-month period. We took the tack that the whole process of appointments would cease once the writs were good. There is a bit of slippage there if an appointment is tabled the day before an election is called, but there is not much room. A government would have to be extremely devious to take advantage of it. Let me put the question to you: Do you feel Mr. Sterling's--

Mr. Sterling: I am trying to ensure that no matter what a government does, it cannot get around the review process.

Mr. Martel: If the government did not follow the recommendations, then under the new government it would be reviewed by a committee.

Mr. Chairman: On page 29, the simplest thing would be to insert after the last sentence of the text that any other appointments made in any other manner could be reviewed after the election.

Mr. Sterling: You could say that if an election intervened in the 60-day period prior to the completion of a committee dealing with an order in council, that process would be delayed until 60 days after the election.

Mr. Chairman: Maybe this will work, "If the review process is interrupted by the writs being issued, the review process will continue after the election." He is trying to deal with the situation in which a review is under way and is interrupted by an election. One could say that after the election is over and the committee is gone, that review is concluded. We can put in a statement to the effect that a review process that was interrupted by an election could be continued after the election results had been confirmed.

Mr. Sterling: Would it not change recommendations 17 and 18, Mr. Eichmanis? Those recommendations would no longer be necessary.

Mr. Chairman: We do want to make the statement that no new appointments are to be made after writs are issued. We have provided for an extension of the time period of existing appointees. My suggestion is to put



it in the context that you cannot interrupt the review process by an election. You can, but we will extend it.

Mr. Bossy: Are you saying that you are tying down any new government that comes into power?

Mr. Chairman: No. A new government has the power to make appointments.

Mr. Bossy: However, you are tying it down to the fact that any appointments made prior to its election must be reviewed by it.

Mr. Chairman: No.

Mr. Sterling: It is the exact opposite. By extending the process 60 days beyond the new election, a government could withdraw an appointment.

Mr. Bossy: All committees cease when the writ is issued. There is no one to review.

Mr. Chairman: That is right. What we are saying is that we put in the text that the review could continue in a new Legislature.

Ms. Gigantes: If it was asked, it would be extended.

Mr. Martel: If the review started tomorrow and the next day the writ was issued, the review would stop. After the election was over, no matter who was in power, the new committees would be structured and empowered to continue where the review left off. This allows the new government to say, "Wait a minute; we did not like some of those appointments and we are not going to proceed with them."

Mr. Bossy: The new government could say, "We do not like the review process."

Mr. Martel: Sure. It could change the whole act.

Mr. Chairman: Do we have consensus that we will insert in the text as we report that an extension period will be put in to accommodate the interruption caused by an election.

Mr. Warner: That sounds eminently sensible.

Mr. Chairman: That deals with the known amendments that I have.

Mr. Bossy: Can you clarify for me the pre-election period?

Mr. Chairman: When writs are issued, that is the election period. That is all we acknowledge.

4:40 p.m.

Mr. Bossy: We do make the statement in the clause on page 28, "No government, therefore, should increase the volume of appointments in a pre-election period." Why would we make that statement or should we not make it because we are confusing everyone?

Mr. Martel: That is what Pierre Elliott Trudeau did. He appointed a

whole group of people. He saddled your friend John Turner with appointments that Mulroney took you to--

Mr. Chairman: Are there any further amendments from anyone on the report?

Mr. Sterling: On recommendation 8, page 22, after the words "from the date of tabling," I would add, "or 30 days if a standing committee to which an order-in-council appointment was referred decides not to review the appointment."

Mr. Warner: What about "or sooner," instead of 30 days? Instead of putting a number in, where you have "from the date of tabling," we would add "or sooner if a"--whatever it is.

Mr. Chairman: It probably flows a little more nicely, because we have not said to committees they have to say yes or no. We have said they have to indicate they want to take up a review. Therefore, in essence, a committee has 30 days to indicate it wants to make the review. It flows from that.

Mr. Sterling: You do not want to make it too complicated. If they decide on the seventh day, then who do you have to refer to, what committee, where it is and all the rest. You just find out the committee has made the decision not to review, then you know 30 days later that it is done. I think what you say is my original intent was; to try to do it even in 15 days if it could be done that way. I am doing it that way to block out two sets of times, for simplicity more than anything else.

Mr. Chairman: That is fine. I have to get a vote on this. Mr. Sterling moves that the following words be added to recommendation 8, "or 30 days if a standing committee to which an order-in-council appointment was referred decides not to review the appointment."

Those in favour? Those opposed?

Motion agreed to.

Mr. Chairman: Are there any other amendments? Mr. Martel?

Mr. Martel: I have one concern. I read this pretty carefully and I did not see anything, but maybe I missed it. My friend Mr. Morin raised this question. Once the data bank had received all the applications and potential appointments were going to be made, I thought we had agreed we would feed back the appointments for their ridings to the individual members.

Mr. Chairman: Members have access to the bank.

Mr. Martel: No, I did not ask that. In fact, it is the opposite. I recall Mr. Morin being very concerned that somehow he would not know that people from his riding were going to be appointed. I thought we had agreed we would have a mechanism in place which sent back to the individual members the people from his constituency who had been either appointed or rejected, so the member would know at all times precisely who from his area was getting appointed to what.

I have some sympathy with Mr. Morin and with that idea. It is a way of our knowing what the hell is going on in our own ridings. If we do not do that, we will not know. I thought we had a consensus last time that we were going to include that in the report.



Mr. Chairman: What page?

Mr. Martel: It is on pages 17 to 20. The recommendation is on page 20. When I read it last night, I put a note beside it. I thought we had agreed that members should know who from their area is going to be appointed.

Mr. Chairman: Mr. Martel would like, probably somewhere around page 19 or 20, that notice be given to members when an appointment has been suggested.

Mr. Martel: From their riding.

Mr. Chairman: Yes, for their riding. You have no problem with putting it into the text.

Mr. Martel: I do not care where it goes but I would like it in there.

Mr. Chairman: Is it agreed that we will insert on page 19 that local members be notified when a nomination comes in?

Mr. Martel: From their area.

Mr. Chairman: Is that agreed?

Mr. Sterling: I just want to get the intent correct here. For instance, if a particular individual wants to sit on a board and he or she sends in an application form to the central office or wherever it is, what if that individual does not want you to know or does not want anybody to know? There are situations where--

Mr. Warner: And they want to sit on a public board? I am not sure I would want them sitting on a public board.

Mr. Sterling: Just a minute. They may have a job somewhere else and they do not want their employer to know they have applied to be on the Ontario Municipal Board.

Mr. Martel: In another place we could put in that this information is confidential.

Mr. Chairman: Perhaps the reason it is not stated as clearly here is that this objection was raised previously. You would have access to the data bank where the nominations are filed. You could know, but the member would have to take the initiative. Mr. Martel is suggesting that a notice will go to the local member informing him that a nomination has been received about an individual who wants an appointment to an agency. I am looking around and I am not seeing consensus on that.

Mr. Martel: That is what I am recommending.

Mr. Chairman: All right. Mr. Martel moves that the appointments secretariat would notify local members of nominations from their riding. That is what we want.

Mr. Martel: Right.

Mr. Chairman: Ready for the vote? Those in favour of the motion? Those opposed?

Motion agreed to.

Mr. Chairman: That will go in on page 19 under the section under the appointments secretariat.

Any further amendments from anyone? Are you ready for the main question? Mr. Newman's motion is to adopt the report and forward it to the Legislature. Is there further discussion? Those in favour of the motion? Those opposed?

Motion agreed to.

Mr. Chairman: Amen. The next order of business is David Flaherty who has a presentation to make to us on Bill 34. Copies of this were circulated to you today. Mr. Flaherty is here. Are we ready to proceed? Mr. Flaherty, will you come up and join us, please?

The process is rather an informal one. Members have copies of your brief on Bill 34. It has been distributed to all members. We want to give you an opportunity to make any remarks you like, and then members will have the opportunity to raise some questions with you. We have now an additional presentation from Mr. Flaherty which we will circulate. Proceed.

#### DAVID FLAHERTY

Mr. Flaherty: Thank you, Mr. Chairman. I appreciate the opportunity to talk to you about the Freedom of Information and Protection of Privacy Act. I have asked the clerk to circulate to you a condensed version of my brief which is what I would like to concentrate on in my brief presentation today. I am going to attempt to stick to about 10 minutes at most to get through these several pages, and then I will be happy to pursue them with you.

I am not going to spend any time telling you who I am. When I looked at my brief, I saw had already preened myself enough. That will take care of that matter. I have also left out most of the specifics from my presentation today. The last five pages of my extensive brief may be relevant to your clause-by-clause consideration, when you look at some of the details of this brief. I also want to emphasize at the beginning that I am speaking here as a private individual.

4:50 p.m.

I am an academic at the University of Western Ontario. I say that particularly because I am a consultant to the federal Solicitor General and the standing committee on justice and legal affairs on its three-year review of the functioning of the federal Access to Information Act and the Privacy Act. As you probably know, those hearings are going on right at the moment. In reviewing my original brief, I noted that I had made an error in reference to specific subsections of sections 39 and 54 on pages 8 and 9. It was subsection 39(2) and then subsection 54(2) on those respective pages. I do not think it makes any large difference, since it will be fairly evident to you what I was trying to talk about in my original brief.

I regard the introduction of Bill 34 as a considerable accomplishment for the present government, and I regard its speedy passage as very much in the interest of residents of this province. The bill well establishes the long-awaited principles of a citizen's right to obtain access to government information and to have data protection in the public sector.



This committee should make some needed amendments, but in my view, it would be a mistake to regard this bill as fundamentally flawed. I have had an opportunity in the past couple of days to look at the latest committee print that is available to you and that you made available.

I have two major areas of concern I think are worth talking about. I am most concerned about certain aspects of the regulatory or decision-making power granted to the information and privacy commissioner under Bill 34. In my view, this will lead only to additional bureaucracy and confrontations with the regulated, especially with respect to privacy and data protection issues.

I recommend that the regulatory power granted to the commissioner under clause 55(b) be changed to a power to give advice only. This would retain regulatory power for the commissioner with respect to the freedom of information and access side of his or her work, but remove it for data protection. I am recommending that the power of the commissioner on the privacy side be advisory rather than being regulatory or having the actual power to make decisions. Advisory systems of data protection are much more successful than regulatory schemes for achieving the broad goals of privacy legislation.

Data protectors should have only the power to give advice, not the power to order that something should be done. The advisory model for data protection is followed with considerable success in West Germany, Canada and Denmark. These are all countries in which I have done work regularly over the past 10 or 15 years as a student of these privacy and data protection and freedom of information issues.

Implementing privacy and data protection in the public sector is a process of gradual, incremental change, achieved by continued consultation over fair information practices between the staff of the information and privacy commissioner and those responsible within government departments. The use of advisory powers only for the commissioner facilitates this process of consultation since there is no inclination to adopt legalistic positions from the beginning on either side. As well, the commissioner has considerable power in reporting to the Legislature and the general public through the media in the event of blatant noncompliance with his or her recommendations.

My opposition to the granting of decision-making power to the information and privacy commissioner under clause 55(b) of Bill 34 is further reinforced by my model for how data protectors should do their jobs. In my view, their primary task is to identify and articulate the privacy interests that are or may be at stake in the creation or expansion of personal information systems.

It is not the task of data protectors to draw the suitable balance between personal privacy and competing values; hence my reluctance to see them granted regulatory power. They should be actors in the balancing process, but not the final decision-makers. In the unlikely event that the regulators and the regulated cannot agree, that is ultimately a task for the government and the Legislature.

My second major area of concern is the idea of appointing a single information and privacy commissioner for Ontario. Freedom of information and privacy protection are two related but separate activities. Because of the costs involved, I am persuaded of the merits of relying for the time being on a single information and privacy commissioner to oversee implementation of Bill 34. You have to recognize as a committee that this will be frankly experimental.

No other country or jurisdiction except Quebec, which has a three-person committee, tries to combine both activities in one body. There are four people doing that work at the federal level: an information commissioner, a privacy commissioner and two assistant information commissioners. It is probably impossible for one person to do both those jobs because of the burden of access to information. I have a type of solution I would like you to consider.

There remains the problem under Bill 34 of separating, for purposes of implementation, the two functions of access to government information and privacy protection. In my view, subsection 4(4) of the bill, which provides for an assistant information and privacy commissioner, should be changed to provide for an assistant information commissioner and an assistant privacy commissioner. This would lead to a visible single head of the agency, the information and privacy commissioner, supported by twin arms of his or her office to handle the separate and in many ways competing responsibilities for freedom of information and privacy protection.

Further down the line, staff investigators and auditors working for the commissioner could probably work on both sides in order to prevent unnecessary expense and bureaucracy. Nevertheless, a system of twin commissioners would mean the public and government institutions would have a clear line of approach into the agency, depending on whether their problem was access to information or data protection.

The third point I would like to make is that section 55 of Bill 34 should explicitly grant the Information and Privacy Commissioner the power to carry out audits and inspections of government information systems in order to permit him or her to carry out the assigned responsibilities under clause 54(2)(b) of assessing the extent to which institutions are complying with this act. For a Privacy Commissioner, the auditing part of his or her job is by far the most important function. John Grace, the federal Privacy Commissioner, is very much on the public record to that effect.

Fourth, I strongly urge the committee to provide explicitly for a right of review in the courts from a decision of the Information and Privacy Commissioner. It is not quite clear to me what stage you are at on that issue, since there has been so much discussion in your hearings, but an explicit appeal to the courts is rather attractive.

I see my fifth recommendation has already been accomplished in subsection 46(1) by the proposals by the Attorney General (Mr. Scott).

In conclusion, I have a couple of specific recommendations.

The committee should seriously consider extending the definition of an institution to cover municipalities, schools, universities, hospitals and crown corporations. The issue is too important to be left to regulations, as is the current case under the law. Quebec's equivalent law on access to government information and the protection of personal information applies to 3,600 government institutions, including all those listed above. I applaud the Attorney General's announcement that the bill will apply to 150 crown agencies.

Bill 34 includes law enforcement exemptions in section 14 that are simply much too broad and expansive, for reasons we all understand. The anxious fears of the law enforcement community about the impact of the federal Access to Information Act have not proved realistic in practice. Among other things, I urge members of the committee to insert the word "seriously" before the word "interfere" in clauses 14(1)(a) and 14(1)(b).



I would like to quote from Superintendent Pat Banning who is the privacy and access to information co-ordinator for the Royal Canadian Mounted Police. He was speaking at a national conference in Ottawa which several members of this committee attended on March 7, 1986. He is the person in charge of privacy and freedom of information for the RCMP, with a lot of experience on it.

He said: "Up to this point, we are not aware that the release of any information under the legislation has jeopardized RCMP operations....Not only is there no evidence that the Privacy Act or the Access to Information Act has had a negative operational impact on the RCMP; in many ways it has probably made us a more professional organization." I am quoting from page 7 of my original brief.

I understand there are some law enforcement people testifying before you later today. If that is the case, I thought I would simply mention a couple of aspects of the law enforcement business. There is always enormous fear that somehow data protection, in particular access to information, is going to make law enforcement impossible. The federal record of the past three years is quite impressive on that score. The fears that were expressed in the hearings on Bill C-43 in 1982 have not come to fruition.

I also was very familiar with the situation in West Germany and Sweden where law enforcement people and data protectors, in particular emphasizing the privacy side, have learned to get along very well together and to regard data protection as very much in their best interest. I would also mention that the RCMP has done an excellent job of implementing both the federal laws, access to information and data protection.

I use as an example of the problems that still exist in the law enforcement field the Canadian Police Information Centre. I had the pleasure of publishing an article about it in the current issue of the University of Toronto Law Review. If you look at that article, you will see that very careful protections have been built into CPIC, as it is called, for the purpose of data protection. Yet there are still real oversight needs that must be exercised over this federal-provincial massive data bank in which about 10 per cent of the Canadian population appear at any one time.

Federal and provincial data protection agencies will have to work together for that purpose. Nevertheless, from a pro-law-enforcement point of view, good protections have been put in CPIC for most of things. Now we need to have external auditors, such as the Information and Privacy Commissioner of Ontario, the federal Privacy Commissioner and the Quebec Commission d'accès à l'information, to take a close look at how these practices are actually being implemented so the general public will find it even easier to be satisfied that these great computerized information systems are not being operated to the detriment of individual citizens.

In regard to subsection 39(2) of the act, there is a strange situation. I am recommending that you add something to it, while the Attorney General has already dropped subsection 39(2) in his proposed revisions. That is one of the few changes I am not enthusiastic about. I urge the committee to require that copies of requests received by an institution for law enforcement be available on request to the Information and Privacy Commissioner, in addition to the responsible minister, as the subsection currently provides.

What you are trying to do in the law enforcement field is create an audit trail. If law enforcement agencies go to any government institution and

use records, there should be a record kept of that. That makes it a lot easier for the Privacy Commissioner's staff to come along at a later date and check what actually went on.

In preparation for the federal hearings on the Privacy Act, the staff of the Privacy Commissioner audited all the records kept federally for that purpose to make sure things were going properly. It is part of the public record to see that he did not find any terrible things happening, but the general public is comforted to know somebody is keeping an eye on what goes on in this sensitive area.

Subsection 42(3) should be amended to add a requirement of notification of the Information and Privacy Commissioner about consistent uses of information. Such a requirement is wisely imposed under subsection 9(3) of the federal Privacy Act.

I have grave reservations, or at least curiosity, about the explicit inclusion of the concept of a mediator advanced in section 47. I do not really know what this mediation function is intended to be, because the early parts of the bill talk about mediators in a way that apparently has them working for the Information and Privacy Commissioner.

If that is the case, I am not bothered, but the step as currently outlined in section 47 seems unnecessarily bureaucratic and expensive, since every privacy and freedom of information commission or commissioner in the western world proceeds by means of mediation in the first instance.

The current language seems to imply the use of mediators outside the normal staff of the Information and Privacy Commissioner. Surely such mediating efforts should be carried out by the specialists assigned to the commissioner's office. The intent of the section seems unclear at present.

Finally, I urge that clause 55(e) be amended to ensure the commissioner may receive complaints and representations from the public.

I will also mention two or three other things that came to me today as I was reviewing your hearing record. One of the crucial needs that has appeared federally--

Mr. Treleaven: I am sorry. I just came from the House. There is a Conservative amendment on section 2 of Bill 94. It was obvious that it was winding down, and I wondered whether I was even going to make it here before the bells started.

The Acting Chairman (Mr. Warner): To the witness, under our rules and practice of procedure, committees cannot function when the bells ring summoning members to a vote. Unfortunately, we must stop you in mid-sentence and resume whenever we are able to do so.

The committee recessed at 5:03 p.m.

5:31 p.m.

Mr. Chairman: We have a quorum.

We apologize for the interruption. For those of you visiting us this afternoon, when the bells go off so do the members, until such time as something is actually concluded. We have a little difficulty in projecting



exactly when the votes will be taken, so this may be an interesting afternoon for you. We will try to adhere as closely as we can to the schedule but we are obviously offtrack.

Mr. Flaherty, would you like to continue?

Mr. Flaherty: It is a pleasure to see democracy in action so close up.

Mr. Chairman: Some days.

Mr. Flaherty: Some days. For the lay person, it is still a treat of sorts.

I finished the formal part of my presentation. I want to mention three issues I will be happy to discuss with you, if you wish. I am able to see from the federal point of view the benefits of a three-year review of these pieces of legislation, such as you already have in your act. The federal hearings to date have displayed some real problems with computer matching in the federal government. I will be happy to talk to you about that if you are interested.

The regulation of the International Criminal Police Organization, Interpol, is also an interesting subject because it is relevant to the law enforcement community in Canada and elsewhere.

The last point is you have to find a mechanism in Ontario so there is mandatory consultation of some sort with the Information and Privacy Commissioner when new legislation is going through the Legislature that has implications for personal privacy. The federal experience during the past three years has been that the Privacy Commissioner does not know what is going on. All of a sudden there is a new act which has a negative impact on privacy and nobody has ever bothered to ask the Privacy Commissioner's views on this piece of legislation. That is one of the most significant problems the public record on the federal hearings reveals to date.

Thank you for the opportunity to make a presentation to you. I will be happy to answer questions.

Ms. Gigantes: I would like to pick up on two points. Thank you very much for your submission and for your longer brief. There are two points you are quite clear on. The first is the question of advice as opposed to ordering. I would like to get a little more understanding of why you see a difference in the Information and Privacy Commissioner as privacy commissioner being able to give only advice and as freedom of information commissioner being able to order.

Mr. Flaherty: My conclusions are based on work I have been doing for the past 10 years in Sweden, West Germany, the United Kingdom, the Scandinavian countries, Canada and the United States on the implementation of privacy and data protection laws in the public sector. It is one of my academic specializations, and I publish books and articles on the subject.

My conclusion is that when you give decision-making power to a privacy commissioner, using the Canadian term and forgetting about information commissioners for the moment, you create incredible bureaucracy. You create registration systems and paperwork. I know this is not in your bill, but you do create a confrontational atmosphere contrary to the best interests of privacy and data protection.

My best example is West Germany, where the federal data protection commissioner in West Germany has the power only to give advice on any type of personal information handling in the West German government. He has been doing that job since 1977--the second incumbent is now in place--and has been very effective in working with all segments of the public service, including the law enforcement community, the counter-terrorist groups and the intelligence groups, the equivalent of the CIA. All are subject to data protection in West Germany.

The reason they have been able to work gradually to achieve incremental change is that the power has been advisory. Anybody who has been thinking about the implementation of this legislation in Ontario knows that the initial reaction of the public service to legislation such as this is not very positive, unless they are different from civil servants anywhere else in the world. There is a very hostile reaction. It takes explaining, mediation and consultation. It takes the staff of the privacy commissioner demonstrating their competence on these matters, demonstrating that data protection and fair information practices are in the best interests of the agency because often they clean up junky files and records.

In West Germany, the data protectors have been able to show the BKR, which is the national police force such as the FBI or the RCMP, better, more protected and fancier ways to move data around, to move the systems from a technical and automated point of view. They built up real specialization in the staff of the data protection commissioner in these matters.

I could go on and tell you how in Sweden, and France in particular, where that direct regulatory power exists, in my judgement, the results have not been as good as that which exists under an advisory scheme. I do not mean to suggest that the privacy commissioner should be turned into just a simple Ombudsman, because there is a positive creative role to the work of the privacy commissioner, as illustrated by the work of our federal Privacy Commissioner in Canada.

The job is a proactive one, not only to sit and wait for complaints, but also to go out and look at information systems, to audit the auditing systems that are in place already for personal information in the federal government.

Ms. Gigantes: However, many of those arguments could be made on the side of the access-to-information process.

Mr. Flaherty: I agree with you. I am torn here between my views as a citizen, attempting to be a responsible citizen, and my views as an academic. I regard your bill as a very strong bill. On the access side, I will be quite interested to see how well the system works with that type of power to order something to be done and given to the information commissioner.

I am very much in favour of freedom of information and I am not going to sit here and tell you to water down the information side. I do not even suggest it because I think the freedom-of-information principle is such a radical, dramatic, positive and necessary improvement in the relationship between governments and the citizens in any province in this country that I am really in favour of it.

Ms. Gigantes: Yet you advise a court review for both functions and you mean a de novo court review.

Mr. Flaherty: Yes, but I should explain what I mean by that. I may get beyond what I can handle here.



The federal record of the past three years is that everybody is not running to court. Under the Freedom of Information and Protection of Privacy Act, the Access to Information Act and the Privacy Act, there have been only 12 cases so far, which is really a very small number. This is not the United States. We do not have the tradition of litigation. The Ombudsman-type creation of an information commissioner and a privacy commissioner seems to work, with the commissioner serving in a mediating role, the information commissioner and the federal Privacy Commissioner doing that. I see no reason why that will not work in Ontario.

Ms. Gigantes: But that result may be different if the commissioner here has the power to order.

Mr. Flaherty: That is possible. You could apply my argument about the privacy side to the information side. I will be interested if you leave in the regulatory power with the information commissioner, because it will mean that government departments will find it harder to drag their feet as they have done in certain federal departments.

Ms. Gigantes: One other area I am not sure I followed quite properly is point 5 on page 3. You suggested that concern had been met in an amendment already printed.

Mr. Flaherty: Yes.

Ms. Gigantes: Are you referring there to section 49 of the bill?

Mr. Flaherty: No. I am referring to subsection 46(1). At the end of subsection 46(1) previously, there were restrictions on the right to appeal to the courts. Let me read it to you. That has been removed. I did not know that when I was sitting in California doing a summary of this brief; not until I got here.

5:40 p.m.

Ms. Gigantes: In that context then, would you please take a look at subsection 50(1a) which removes what is given with that change to subsection 46(1). Subsection 50(1a) is at the bottom of page 33. Essentially, as I read it, what it means is that if the commissioner says the head has discretion to refuse to disclose a record or part of a record, then the commissioner shall not order the disclosure.

Mr. Flaherty: Yes. I thought it was rather redundant to say that.

Ms. Gigantes: I do not know if I understand your concern on page 3.

Mr. Flaherty: Let me explain it to you. If you go to the original version of the bill that was before this committee and look at 46(1), at the very end of that subsection there was all this language, "but the exercise of the discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in sections" etc., "is not appealable." I did not like the fact there was that restriction on appeal.

Ms. Gigantes: Under the old 46(1), the appeal referred to is to the commissioner. That is exactly repeated in our new subsection 50(1a), as I read it.

Mr. Flaherty: Then I am confused on that point because of the

changes that have been made. I do not quite see what is going on.

Mr. Sterling: Can we have legislative counsel advise? Is Ms. Gigantes correct?

Mr. McCann: I am not legislative counsel.

Mr. Sterling: I am sorry.

Mr. McCann: I am representing the Ministry of the Attorney General. The ministry's view is that the effect of the reprinted bill with the proposed amendments by the Attorney General (Mr. Scott) is essentially the same as the previous version. There was a complaint about section 46, first, because it was unclear, and second, because it said certain things are not appealable. I think the two versions are different in the sense that everything is appealable under the Attorney General's proposal. There is a restriction on the orders the commissioner can make, namely, that where the commissioner agrees that a record is exempt from disclosure, the commissioner cannot order the head to disclose. Our position is that in practice it amounts to--

Ms. Gigantes: Can I interrupt there? Is it not where the commissioner agrees that the head has discretion not to disclose, if you read the new subsection 50(1a)?

Mr. McCann: I am not sure.

Ms. Gigantes: It says "may refuse to disclose." That means the head has the discretion.

Mr. McCann: I think it means the head has to have grounds to refuse to disclose under one of the exemption provisions: 12, 13, etc. Perhaps the wording can be clarified. If the commissioner finds there are no grounds for exempting the record from disclosure, then I think the commissioner has the power to order the head to disclose. The Ministry's view is that, from a practical point of view, the difference is not very great from the old version of the bill to the proposed version. It is a question of clarification.

Ms. Gigantes: I do not think it is clear. If the interpretation we have just been given is supposed to be read into the new 50(1a), that is not how I would read 50(1a). In fact, we had this discussion when Mr. Rubin was before us last week. I believe we had clarification then which is contrary to what we have been told just now.

Mr. McCann: We will have to try to unravel this.

Ms. Gigantes: Thank you.

Mr. Flaherty: When I look at the fuller version of my brief, I realized that was a restriction on the capacity of an individual to appeal to the information and privacy commissioner. I favour no restrictions on an appeal to the commissioner. When I produced this condensed version, I lost track of what I was trying to say.

Ms. Gigantes: Thank you.

Mr. Sterling: I do not like the non-Ombudsmanlike role of the privacy or of the information commissioner. Assuming it was the decision of the committee to give him recommendation powers, as was the case in the



federal acts, so that when the information was to come out, he could act as a broker for the information, or whatever you want to call it, what appeal process would you then set up? Would you go straight from the court on the recommendation?

Mr. Flaherty: Do you mean from the recommendation of the information and privacy commissioner?

Mr. Sterling: Yes.

Mr. Flaherty: Yes, I would. The evidence on the public record is that the federal system is working reasonably well. There is always the problem of whether the incumbent is going to be more or less of an activist. It is particularly a problem when you have two people serving in these roles, as you have federally, where you have an information commissioner and a privacy commissioner. In the wisdom of the federal government, the two commissioners were put in the same office and share certain staff. Obviously, they have two competing jobs in a way, and there are two personalities there. That is one advantage of having the same person. You could drive one person crazy. In this case you are driving two crazy with the burdens of the office, so you have quite a choice.

Mr. Sterling: The review would be in trial de novo--in other words, on the facts as well as the law.

Mr. Flaherty: Yes, I favour that. I am not that competent on that subject, but based on my understanding of how the federal system works--if that is exactly how the federal system works--I do not see any problems with it. I would emphasize there is not yet any evidence of a flood of federal litigation, simply because government departments are gradually learning to live with freedom of information and protection of privacy. We have good, strong leadership in both those jobs at the federal level, just as the Quebec commission has good strong leadership on both the data protection or privacy protection and freedom of information sides. Your job in Ontario is going to be finding good leadership.

Mr. Sterling: On a different subject, from your experience in terms of the privacy end and the added power to give advice that you would like--this may be audits and a mandatory role for consultation on legislation. Would you right the committee about the stage of the process you think that should come in? I am not sure where it would come in.

Outside of that, would you give the privacy commissioner any role outside of government agencies?

Mr. Flaherty: That is an interesting question. You are talking about the private sector?

Mr. Sterling: Yes.

Mr. Flaherty: Universities, this sort of thing?

Mr. Sterling: Banks, financial institutions.

Mr. Flaherty: I am on record as favouring self-regulation by the private sector. I also think self-regulation has to occur at some point. There is some serious issue of extending the federal Privacy Act to the federally regulated private sector, which would include banks and telephone companies.

The record of self-regulation at the federal level in that sector has not been excellent. As you probably know, the federal Bank Act says nothing about the confidentiality of personal information. Only the Bank of Montreal currently has a privacy protection code in place. A draft privacy code has been announced by the Royal Bank, and the Canadian Bankers' Association is trying to develop a privacy code. The CBA representatives are testifying to this effect before the House of Commons committee on justice and the Solicitor General next week. It has taken a long time and all this stuff is still in draft form.

The federal privacy commissioner argues that if you do not have your public sector regulated across the country--and after all, only Quebec has privacy laws in the public sector so far, and Ontario will be second--it is a little premature to extend this to the private sector.

In Ontario I favour encouraging self-regulation by the private sector for the moment, but indicating to the private sector as Francis Fox did as Minister of Communications when Bill C-43 was being enacted in June 1982, that the next step would be the federally regulated private sector. At some point, the next step here might have to be the Ontario-regulated private sector.

There are examples of good self-regulation by the private sector. Any self-respecting type of agency, such as credit agencies and the like, have to get self-regulation in place. It has to be meaningful and there have to be some teeth in it.

Let me give one example, and I hope you do not feel I am filibustering. The Canadian Radio-television and Telecommunications Commission has been persuaded to put in the front of the telephone book as part of the general regulations for all federally regulated telephone companies, which means almost all the telephone companies, a simple statement, which I encouraged. It says the confidentiality of subscriber information shall remain intact. Subscriber information shall only be used for telephone purposes within telephone companies or among telephone companies, except for legal process.

5:50 p.m.

If a law enforcement agency wants your telephone record, it will have to go through a formal legal process. There will not be some of this alleged unauthorized trading of personal information across bank counters which can be documented as having occurred in the past. At least there is hearsay to that effect.

Second, the CRTC has adopted a rule which says the telephone companies have unlimited liability for unauthorized disclosure of personal information. A very simple short clause that is now going to be in the front of the next addition of all the telephone books is a good example of intelligent regulation. It is not wild or maniacal. It is not like the thousand-page section of the federal income tax act of the United States that regulates the confidentiality of tax information. We have not gone that far yet.

If the private sector in this province does not develop some protective guidelines in the insurance field and others, you may have to do something.

Mr. Sterling: I wonder how you twig that conscience. That conscience has not been twigged to date. What power could you give the privacy commissioner to enable him to sound the warning bells in some way, short of regulation of which I am not in favour. What I find with privacy is that it is



secondary or even lower than that in terms of the issue of the day. Therefore, if you do not have somebody who is very much involved in it, you will not have any concern. That is what I am concerned about. I would like to put something in the act which would say that the privacy commissioner could go out and sound the warning bells to the private sector that it has to get its act together.

Mr. Flaherty: There are two things. Canada has subscribed to the Organization for Economic Co-operation and Development guidelines on the protection of personal information. This was done by the Minister of External Affairs in June or July 1984. In that statement, the government of Canada commits our private sector to implementing these guidelines which are the standard code of fair information practices incorporated in your law here.

The Secretary of State for External Affairs, Mr. Clark, was supposed to write a letter to the heads of the major companies in Canada saying, "We have made this commitment to the 23 or 24 countries that belong to the OECD to do it, which took a long time." That letter has never been sent. The federal government prepared a brochure on the implications of the OECD guidelines for the private sector in Canada, in which I had some involvement. That has never been sent out or released. It was 10 or 15 pages telling the private sector: "Here is what the rules should be. You should comply with them, otherwise we are going to have problems moving data across countries." With the European data protection, people may stop the movement of data between a bank or insurance company or a corporation from France to Canada.

My view more specifically is that under section 55, you might want to give an advisory role to the information and privacy commissioner for privacy issues in the private sector; an advisory role in the sense of allowing individuals to complain to the privacy commissioner about a problem. This so much expands the scope of the job that I am bothered by it in terms of reality.

If you allow the privacy commissioner's office to then go and investigate complaints in the private sector, you will have an army of staff. One of the great goals of data protection and information commissioner staff is to be slim, trim and anti-bureaucratic. The countries that have done data protection best have been that way. No data protection agency in the world employs more than 50 people and those are for countries with populations of 65 million, 75 million and 85 million people. That is a tough situation.

If you say that one of the responsibilities of the privacy commissioner is to offer advice on proposed schemes for self-regulation in the private sector, that is something that would be feasible. Responding and investigating complaints would be too much.

Mr. Chairman: Any further questions? Thank you very much for coming down today and thank you for putting up with the bells.

#### ONTARIO ASSOCIATION OF CHIEFS OF POLICE

Mr. Chairman: The next group to be heard from is the Ontario Association of Chiefs of Police. We have inspector John Carswood, from the Windsor Police, Chief Robert Hamilton, from the Hamilton-Wentworth Regional Police and Chief Jack Marks from the Metropolitan Toronto Police.

Many of you may have been before committees here previously. Essentially, we have your brief. It has been circulated to members of the committee. We would like to provide you with an opportunity to make an opening

statement and then maybe members may have some questions of you. Just proceed.

Mr. Hamilton: I am Chief Bob Hamilton of Hamilton-Wentworth Regional Police. On my right are Chief Jack Marks of Metropolitan Toronto Police and Inspector John Garswood of Windsor Police. We welcome the opportunity to appear before the committee.

The Ontario chiefs have been very interested in the freedom of information legislation since the Williams commission report, and as you stated, Mr. Chairman, we have submitted briefs and reports. Today we are submitting a letter on behalf of the Ontario Association of Chiefs of Police with six points of view. From our perspective as law enforcement agencies, we would like to touch upon them very briefly with the committee. I would turn to Inspector John Garswood to give a full review of our concerns.

Mr. Garswood: Our initial brief to you of March 21 is emphasized in some regard by today's submissions, and we have put our oral submissions in writing. The additional brief is dated today, June 4.

One of our first concerns is with the general law enforcement exemption. We have some concern about the "reasonable" test. We understand other submissions have been made to you, but throughout our submissions we are concerned about the confidentiality of the information that we, as municipal police forces, pass on to a provincial institution. You will notice that is the general thrust of our concern.

We will skip through some of it because it is in writing before you and go to clause 15(b), which is treated on page 2 of our submission dated March 21. Our concern is emphasized in the first paragraph under the Confidentiality heading. We suggest a technical or drafting problem may have been present in this clause, which may not include municipal police forces. We suggest that an amendment be contemplated that ensures municipal police forces are able to deliver their information in confidence to provincial institutions. For the majority, that institution is the Ontario Provincial Police. We are concerned about sharing information with that body.

Following that, under the heading Third Party Information, some concern is expressed with regard to section 17. Certain police information is passed on a third-party basis, that being: "I will give it to you, but you cannot give it to anybody else unless I say so because I am the one who wrote it. I know how sensitive it was and I know perhaps where the other sources were and what kind of position they might be in. The life of a very confidential source may be at some risk."

While section 17 seems to talk more about commercial information, it is its general format, coupled with the section 28 notice to effective persons, we are talking about there. We are asking for some contemplation in that regard if our information is going to be released and we have given it on a confidential basis.

Concerning severability of information, section 23: I am afraid we are definitely opposed to severability as it relates to police information. We do not believe that is the way to go in that regard. We have pretty well said it all concerning severability. I do not know what more we can say except one thing, and this goes back to a previous written submission by the Ontario chiefs. We refer to a United States Senate hearing of August 1978 and have attached a portion of the transcript of that hearing to our current brief.



At that time in August 1978, Senator Sam Nunn was interviewing Gary Bowdach, who was an active member of the Florida underworld and had been declared a dangerous offender by the federal District Court in 1976. I will not read it all, but I will read a couple of parts.

Senator Nunn asks: "You were concerned about those who did not testify, but those who may have been of assistance to law enforcement officials?"

"Mr. Bowdach: That is correct.

"Senator Nunn: On a confidential basis?

"Mr. Bowdach: Yes sir.

"Senator Nunn: People that were never called as a witness?

"Mr. Bowdach: Yes sir.

"Senator Nunn: Why did you want to get their names?

"Mr. Bowdach: To know who they were, to take care of business later on.

"Senator Nunn: To take care of business later on? You mean by that to murder them?

"Mr. Bowdach: Yes sir."

6 p.m.

Senator Nunn's last comment on the bottom of that page: "Did you, on any occasion, ever find out the name of an informant by filing freedom of information requests?"

"Mr. Bowdach: Not in my particular case, no sir.

"Senator Nunn: Did you in anyone else's cases?

"Mr. Bowdach: Yes sir.

"Senator Nunn: Tell us about that.

"Mr. Bowdach: On behalf of Herbert Sperling, we sent a request to the Drug Enforcement Administration. We received back the package, that must have weighed about five pounds, of documents. We went through all of these documents. Deletions were made throughout the documents. In some instances, deletions were not totally complete. They would leave one letter, where it could be recognized, the people that were involved in the case, the amount of space that was deleted, the length of the deletion, take that letter, measure the letter, backspace, see what position that letter is placed in the name, and from that letter they were able to determine the name of the informant.

"Senator Nunn: What happened to that informant?

"Mr. Bowdach: I can only speculate, sir.

"Senator Nunn: What was the purpose of trying so hard to obtain this information?

'Mr. Bowdach: To eradicate the informant.

"Senator Nunn: Do you think the informant was eradicated or do you have any way of knowing?

'Mr. Bowdach: I have no way of knowing, but knowing the people that we are talking about, I do not think the man is among the living any more."

At the top of page 3 of our current brief, we underscore that by saying we submit the success of the bill before you should not be tainted by the possibility of such an occurrence in our province, and we respectfully suggest, with the greatest emphasis, that section 23 be amended to exclude the section 14 law enforcement exemptions.

With regard to clauses 39(1)(d) and 39(1)(e), we are concerned here that disclosure from the Ontario Provincial Police or from another provincial institution may not be permitted to municipal police. We suggest that may be a drafting problem, and it would be appropriate to include municipal police forces as one of the agencies to which they can disclose.

As we said earlier, we are concerned about the security of our information. There are 125 municipal police forces in Ontario which deal with the Ontario Provincial Police and other provincial institutions every day. For that reason also, we suggest in our remarks on clause 39(1)(d) that subsection 39(2) be eliminated. The working of that would be to slow down the OPP dramatically. It may really be, in our opinion, an unworkable section. To record our requests each and every time, each and every day they are made, would slow down law enforcement dramatically. We suggest that the committee consider withdrawing that section from the bill.

That is the basis of our comments concerning Bill 34 today. We very much appreciate the opportunity to appear before you. We stand ready to assist you in any regard in any further deliberations. Perhaps we see some of this from the ground floor up in looking at freedom of information. As Chief Hamilton has said, we are not opposed to the theory and idea of the bill, but we hope and trust the final formation of the bill will not impair law enforcement for the citizens of this province.

Mr. Sterling: Municipal police forces are not included under this bill. Would you object to being included?

Mr. Hamilton: Yes, the Ontario chiefs' position is that it is provincial legislation dealing with provincial institutions and that the 125 municipal forces, which Inspector Garswood talked about, should not be included in this legislation.

Mr. Sterling: Much of the information that is shared among the municipal, provincial and federal forces is the same information. Is it not difficult to track which information is coming from which source, and which can be shared? You were talking about administrative problems. Would it not be administratively easier if everybody, or as many forces as possible, were under the one act?

Mr. Garswood: To have 125 municipal police forces trying to administer this act would be a nightmare. Some of the police forces in Ontario are quite small. The misinterpretation and the accidents of releasing information that could occur could be very dangerous. I might suggest that even the OPP will have some difficulty in the interpretation of the act.



The difficulty in the severability section will be tremendous, as we pointed out in the Senate hearing transcript. You can see what happened there. In the Detroit area, according to a press report several years ago, 20-odd members of the Zerrilli organized crime family decided together to file for information that law enforcement had on them to the Federal Bureau of Investigation only.

The success of that may never be known, based on what intelligence is gathered by the American police. However, if there were 29 on one police force, you can imagine 29 on a group of police forces. They could simply hop from force to force, trying to find out a little bit here and a little bit there.

Ms. Gigantes: You questioned the application of section 23, the severability section. What section has been removed from the new printing of the bill?

Mr. Garswood: We understand that there has been some type of amendment by the Attorney General, which we became aware of only today.

Ms. Gigantes: It has been removed; it has been eradicated.

Mr. McCann: The severability section has been moved. It no longer appears as section 23. It is proposed to be included as subsection 10(2).

Mr. Warner: Is it in here now?

Ms. Gigantes: Yes, it is.

Mr. Garswood: I am sorry; I was thinking of another section.

Mr. McCann: The severability provision is still there in subsection 10(2).

Ms. Gigantes: You are right. I had that noted. I just looked at section 23 and had not seen a cross-reference.

Mr. Garswood: The remarks would apply to section 10.

Ms. Gigantes: On part II, could you point out what it is about what you call the "exemptions"--I think that is the word you used--that concern you in section 14?

Mr. Garswood: Generally, we are concerned about the reasonable test. Previous draft legislation had words in a more positive manner. The reasonable test could go anyway. What is reasonable to one person may not be reasonable to another. We think there should be a more positive description there. Perhaps it should be "tend to disclose" or something such as that.

Ms. Gigantes: Section 14, as I read it, says, "A head may refuse to disclose..." a whole number of things associated with law enforcement or from which a law enforcement proceeding is likely to result and so on. It has a long list under subsections 1 and 2. Then, under subsection 3, it says, "A head may refuse to confirm or deny the existence of a record to which 1 or 2 apply." What is it that is frightening to you about section 14?

Mr. Garswood: It is the reasonable test. In subsection 14(1), the second line says "disclosure could reasonably be expected..." That is the

interpretation that could be left to some variance. It would be our suggestion that perhaps "disclosure that would tend to interfere with a law enforcement matter" would be stronger.

6:10 p.m.

Mr. Warner: You want to replace the word "reasonably" and substitute "tend."

Mr. Garswood: Yes, that would be a better way of doing it, in our opinion.

Ms. Gigantes: You want to replace "be expected to" with "tend to." You have to understand that there is some interest from the public, the media and certainly from us, as politicians, in learning certain matters about law enforcement within Ontario. There has been some cause in the past, which you will all be familiar with, why the politicians, the public and the press have been interested in learning about the operations of law enforcement in Ontario. You would not deny that.

It seems to me that what we have in front of us already in section 14 is a grave inhibition in those cases where there is a reasonable concern on the part of the public and its representatives, through the media and the elected legislators, to find out what is happening in law enforcement. You are suggesting that we should make it even wider.

Mr. Garswood: No, I would not take it that way at all. Some years ago, it was written that the police are merely the public put into uniform. I still subscribe to that. Every large police force in Ontario holds a press meeting every day disclosing as much criminal information as it safely can without injuring a subsequent court action. We developed community relations offices. Some of them are very aggressive in passing on information to the public.

We are not trying to hide behind anything. We need the assistance of the public. As you can see, there are all types of programs that police forces are coming up with now and that others are coming up with where we work in co-operation. There is not any suggestion in any of our remarks--and I hope nobody ever reads that into our remarks--that we are saying anything akin, by any distance, to a police state, secret police activities or anything such as that.

We need the assistance of the public; we need it every day and every moment we are working. We need it in all types of formats, whether it is on a confidential basis, walking in the front door, through a television interview or writing our own periodicals. There should be no mistake on that. However, there is some information that needs to be protected so that police can properly do the job.

I will refer back to that interview again in the US Senate. There was the disastrous thing that could happen. It has probably happened elsewhere and we do not want it to happen to us. We do not want people who give us information to fear in any way, shape or form, that they may be compromised. We do not want our court cases damaged by revelations in the press where we could have anything from a change of venue to dismissal, withdrawal or we have to get out of it. That is not what we are in business for and that is not what the public is paying us for.



Ms. Gigantes: Let me put it to you that if the police are the public in uniform, the police, like the public, are subject to sin. Every bureaucracy known to man is subject to misdemeanour, misorganization and misbehaviour. You know that as well as I do. We all know that; we are all adults.

The problem for the public, the elected representative and the media is that there must be access to certain kinds of material about the police so we can ensure ourselves, from time to time as the need may arise, that we can reorganize where misdemeanours have occurred. How do we do that without information? How do we get information without access to information?

Mr. Garswood: One of the best ways that will come about is through the courts. This bill still has some aspects in it that will take care of those things.

Ms. Gigantes: No, because under section 14 a head may refuse to confirm or deny the existence of a record and when the commissioner, who is appealed to on a case like that, decides that the discretion rests with the head to refuse to disclose the existence of a record, or what the record is, that is not appealable. My understanding is that is how it will work. We may have a difference of opinion on that and we may have to reword it, but that is my reading of the bill currently. The courts will not come into it at all. It will end where the commissioner says: "The head has the discretion. I stand behind him. He or she has used discretion and we will not talk about whether the record exists." Second, if you take it to court the court will say, "The law says the commissioner cannot look at this. We cannot look at it. Period. Finish."

Mr. Garswood: Of course, that is all the information that is set out in the restriction categories in clauses 14(1)(a) to 14(1)(l).

Ms. Gigantes: It is fairly wide.

Mr. Garswood: There is yet a lot of information that the police desire to disclose--in the remarks that I made earlier--when we are working with the public.

Ms. Gigantes: Ontario Hydro came before us and said it had spent so much time putting out information to the public. When I, as an elected member and a member of the select committee on Ontario Hydro affairs, said the kind of information which the public wants to find out, because of financial concerns, because of safety concerns, because of energy planning concerns, Ontario Hydro does not want to give. The organization is making a choice about which kinds of information are easily available, or available at all. That is what concerns me when we look at a separate institution, such as the law enforcement institutions in this province, and how many restrictions we put on access to information.

I understand your concerns, but this bill laps and overlaps in its statement that information shall not be released where it can affect the safety or health of an individual. It says it in the law enforcement section and it says it in earlier sections.

Mr. Garswood: I do not know what concerns were raised by Ontario Hydro. I find it hard to equate what it might say with the police, unless it was security of the hydro network in North America or something like that, which might be national defence. There are a great number of people who are watching the police, as I am sure you are all aware. We watch ourselves from

within. There are discipline codes; there is the hierarchy of structure of the police force from chief on down to the lowest and youngest constable; there are courts; there is this bill and there are other factors. Remembering what I said, there is certain information that needs to be restricted and I believe that is set out in here.

6:20 p.m.

Mr. Warner: I understand your concern. The most difficult atmosphere for a police force to function in is a democratic society. It is always a balancing act between what the public good is with respect to protection of the citizens and any, at least perceived, abuse of power.

If we go to section 14 and we remove the word "reasonably," we turn this thing around. If the head is convinced that the disclosure of a record will not interfere with law enforcement, reveal sources, etc.--all those things that are listed there--if the head is convinced that by releasing the document it would not do any of those things that are listed, then would you be satisfied that it would be a proper procedure to follow?

Mr. Garswood: Yes.

Mr. Warner: Then the trick is to find the wording which accomplishes that. "Reasonably" is obviously a subjective word. Everyone applies his own idea or definition. It is a very difficult word to define. One alternative is to leave it the way it is, implying that the head, whoever he is, has to exercise judgement that will always be good. The head may refuse. He can say: "I can be reasonably assured in this instance that by revealing the information I put an individual at risk. Therefore, I will not release the information." The head has that authority.

Another alternative is to remove the words "could reasonably be expected to," so it will read, "A head may refuse to disclose a record where the disclosure could," etc. A third alternative is to find another word for "reasonably." When we get to clause-by-clause, we can discuss that. Even if it is left the way it is, the reliance is upon the ability of the head to exercise sensitive judgement, so by releasing particular information he is not interfering with law enforcement, endangering life or doing any of the things listed there.

As a member of the committee, I understand your concern. The committee is sensitive to the fact that we do not want to do anything to interfere with law enforcement or to endanger the life of a citizen attempting to assist in law enforcement. At the same time, we must allow the public the opportunity to obtain information about which it has a proper concern. That is the balance. It is the balance for the police force, for Ontario Hydro and for anybody else who comes before us.

I have mentioned three possible remedies, and there may be more. Other members may have other suggestions. If I think of anything else, I can assure you we will be discussing this fully and completely and there will be some deliberation over what the proper wording is.

Mr. Garswood: I might give you a fourth possibility, which is, so to speak, on the other side of the coin. In some cases, police forces have gone through the school of hard knocks with legislation. I presume in this case the head of the institution may be the commissioner of the Ontario Provincial Police, and I cannot speak for him at this point, but what we want to do is



treat the bill fairly. If it is not treated fairly when it is an act, I am sure our legislators will come back and change it; however, that is not something we want to put at risk.

Mr. Warner: In other words, if the wording is left the way it is, it may work out that you can live with it. If the head, for example, is the commissioner of the OPP--I do not know if that is who it is--

Mr. Chairman: The Solicitor General.

Mr. Warner: --then the whole thing may work well in your view.

Mr. Garswood: It may, sir.

Mr. Warner: And the concerns will be unfounded.

Mr. Garswood: They may. My suggestion here is for an improvement.

Mr. Chairman: I do not know whether anybody will get a sweet, faint whiff of information out of police forces in Ontario under this bill. I fail to see how anybody will get anything out of this.

Ms. Gigantes: There is nothing that is not covered under section 14.

Mr. Chairman: There are protections built into this to safeguard the confidential information. I do not think you are going to get licence numbers of police vehicles out of this thing, let alone confidential sources or things such as that.

Could you help us a little? We are very anxious that your interests are protected, but my reading of the bill is that you are overprotected, if anything. We would be happy to take wording suggestions on how to put that into law, but my general impression, and I think it is shared by most members of the committee, is that there is fairly heavy-duty protection in this legislation for any information you might have. Are you reading it much differently?

Mr. Hamilton: No, we are not.

Mr. Garswood: We are not, sir. We put that in writing, and Chief Hamilton has also said that most of the bill is pretty good. We are here today to help you to improve it.

Mr. Chairman: You are not going to shoot people who ask for information, are you?

Mr. Garswood: I sincerely hope and trust your remarks have a little bit of jest to them. We are not going to do that with the bill. We are not going to close the door and say everybody keep out. That would be one of the most foolish things we could do. You would be back here at the next sitting saying: "Oh, yeah? We will show you how closed that door is." We are not about to do that, not even from our viewpoint as municipal police forces.

Mr. Marks: What we are trying to bring to light, once more, is that the wording gives us some concern, that is all. We would appreciate it if you would take a look at it as you go through it clause-by-clause. That is all we are saying.

Mr. Hamilton: You could even eliminate the word "reasonably."

Mr. Marks: With most of the bill, we have no problem.

Mr. Chairman: We are fairly clear. For example, on the second page of your brief, you suggest that "interfere with the gathering of or reveal intelligence information respecting organizations or persons" is not broad enough. There is nobody left. Once you take out the individuals and the organizations, there is nobody left on this planet.

You have the gathering of information or revealing of intelligence information at the front end, and you have it in the middle. You are suggesting it even at the rear end of the process, where someone might analyse it. I do not know whether it can be a much broader exemption than that. We have exempted all people and groups of people. That pretty well narrows down who is left, but we will try.

Are there any other questions from any committee member? Thank you very much for appearing. We appreciate your efforts to assist us with the bill.

We have about five minutes left, and we asked the standing committee on the Ombudsman to be present today. Unfortunately, we were shaken up with the bell ringing that went on. Mr. Philip is still here but Mr. Shymko is not. Is it the pleasure of the committee to give them the last four or five minutes? I take it they have some other things they want to get on the record or that members had some questions. Okay, you are on.

#### STANDING COMMITTEE ON THE OMBUDSMAN

Mr. Philip: We had made our presentation, and Mr. Sterling was asking us some questions. As I understand it, we were called back to answer further questions.

Mr. Chairman: Are there any questions from members of the committee? In that case, I guess you can see Mr. Sterling in the lobby or in the House, or he will get a chance to visit you.

Mr. Philip: There was a question from Ms. Gigantes earlier in the day. If she asked that question, we could at least answer that.

Ms. Gigantes: The question that has occurred to me out of the presentation made is the difficulties that may arise when a member of the public, Mr. X or Ms. X, decides he or she needs the help of the Ombudsman and at the same time makes a request under the Freedom of Information and Protection of Privacy Act. The Ombudsman, in the course of work on the case, may get access to information the person cannot have under this legislation. My concern is that will mean the person will become exceedingly unhappy about the role being played by the Ombudsman.

6:30 p.m.

Mr. Philip: There are certain sections in the Ombudsman Act under which he has the obligation to withhold information. You may like to read section 13 of the act. However, the greatest safeguard to the individual is the standing committee on the Ombudsman, which deals with those kinds of objections. There is no better safeguard to the individual citizen than a committee of the Legislature that reviews those objections. Our committee is in place and does deal with objections to decisions by the Ombudsman.



Ms. Gigantes: Perhaps I should put on record my feeling that the standing committee on the Legislative Assembly may not be the proper overseeing committee. It may be that the standing committee on the Ombudsman should have that role. Where you suggest that is the best method, I think it is a debatable approach. Essentially, we get to the point where we choose whether the best method is going to be a political method or a judicial method. That is the choice we are going to have to make, but I do not think it is nondebatable.

Mr. Philip: The history of the success of the Ombudsman legislation in Ontario compared with that in other provinces and jurisdictions has shown that the system we have developed is less expensive for the average person and, therefore, more accessible to the ordinary little guy. It results in less polarization between the government and the Ombudsman and, in fact, it works.

Ms. Gigantes: It does for the purposes of the Ombudsman's function. I am not sure that is true for the purposes of this legislation. Earlier today Professor Flaherty suggested that even the structure proposed in this bill, where there is a commissioner and a deputy commissioner, is not workable because of the work load that is going to be involved. I do not doubt that is true. To suggest we then try to combine that work load with the existing work load of the Ombudsman is something I have concerns about.

Mr. Philip: The committee did not make a presentation that the Ombudsman should also be the freedom of information commissioner. That may be my personal view, but it is not the presentation of the committee. All we are saying is that a committee process rather than the judicial process is the best route to go. If I can leave a thought with this committee, it is that you should seriously consider the best route to go, whether it is the standing committee on the Ombudsman, the standing committee on the Legislative Assembly or any other political committee that reports to the Legislature.

We have enough work to do. We do not need to have an extra job thrown upon us. Frankly, I do not care. It just means extra hours I will have to put in if we have this extra responsibility. What I am saying in very strong terms, and it is the belief of the members of our committee, is that this is the route to go. Whether you assign it to our committee or to any other committee is your decision and I will leave it with you but, please, I beg you not to go the judicial route. It does not work. That is why Sweden, with all its years of experience, has gone the route I am suggesting.

Mr. Bell: Can I have 30 seconds? I do not know whether the committee or individual members are leaning towards the political or the judicial course. If you examine the commissioner's recourse to the Legislature by the report function, a very strong case can be made that he already has the political ability. Personally, I do not see a difference between his ability to go to the Legislature and the Ombudsman's ability. The fact that his act does not say he can make a recommendation does not mean he cannot do it. In any event, even if the act said he could not make a recommendation, there is nothing to prevent him from wording it in such a way that it would be a rhetorical challenge to the Legislature to do something.

The only difference is what you build in by way of process. As it is now, it is like the pre-July 1976 Ombudsman. That was when Bill Davis and Arthur Maloney got together when North Pickering was very hot around here and decided they had better create a committee process, if for no other reason than to vent steam, but also genuinely to try to identify a solution, which some believe was identified and others do not.

If you are already there, if you are that far down the road to a political result or political mechanism, I suggest it is very easy to create the final step, the final brick, and that is to put a committee process at the end. Mr. Philip is right that it does not matter whether it be this committee, the standing committee on the Ombudsman or any other committee you want to name, as long as it is done.

Our suggestion to you is one of assistance. You already have a substantial investment in a mechanism here that might be able to deal with minimal briefing with the type of issues people are going to bring before you. I hope you will address that and advise your colleagues in the House on the wisdom of that position.

Mr. Chairman: Thank you. That concludes the public hearing section on Bill 34. We stand adjourned until next Wednesday after question period.

The committee adjourned at 6:36 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, JUNE 25, 1986





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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, June 25, 1986

The committee met at 4:07 p.m. in committee room 2.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT  
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: I am in the hands of the committee on how to proceed this afternoon. It was suggested that we do a walkthrough of the bill, simply talking about the discussions; no amendments would be put, and no votes would be taken. In essence, it is a briefing session. Do members feel it is necessary to have a Hansard record of this? You may want it for reference.

Ms. Gigantes: Yes. That would be useful.

Mr. Chairman: Attorney General, do you want to take us on this walk, or would you rather have your staff do it?

Hon. Mr. Scott: I am delighted I arrived here in time to discuss your travel plans in connection with this bill, and I am prepared to recommend destinations that would be suitable.

Mr. Chairman: Put him on the list.

Hon. Mr. Scott: I think I was absent last time, but I understood the committee did not want what we initially proposed, which was a tour of the bill, section by section, as it was thought that might be time-consuming or not productive, and instead wanted either to have a general question-and-answer session now or to begin at the beginning.

Everyone will have done his homework, which was to read sections 1 and 2, if I recall correctly, and will understand the nomenclature and definitions of the act. If members want to put to me or to staff questions about the bill in a general sense or questions about particular sections that concern them, we might begin to do that now before clause-by-clause discussion.

Mr. Chairman: Okay. Ms. Gigantes?

Hon. Mr. Scott: Surely the member for Ottawa-Centre is not going to be first with the questions.

Mr. Chairman: She always is.

Ms. Gigantes: I was going to suggest we start at the beginning and go through with our questions.

Mr. Chairman: What is your first question?

Ms. Gigantes: My first question would be on page 3. Clause 2(1)(a) says, "In the case of the ministry," the head will be "the minister of the



crown who presides over the ministry." I would like to make sure we all understand that the head is the minister. When we talk about these very difficult decisions about what information gets released or does not get released and so on, we are not talking about any little clerk down the line making a decision. We heard in so many of the submissions, with horror and disgust, that people approve the principle of the bill but do not agree with the practice for their institutions. We are talking about the minister.

Hon. Mr. Scott: I take that to be a positive comment on the bill in the sense that the minister, being the political operative, may take advice from time to time, but he takes political responsibility for the decisions that are made to disclose or to refuse to disclose. It seems to me this has to be at the heart of the scheme.

Ms. Gigantes: It also relates very directly to the whole question of discretion by the head and who shall review discretion, which we will come to later.

Hon. Mr. Scott: Yes.

Mr. McCann: Could we make one point here? Subsection 58(1) is relevant in that it says, "A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution subject to such limitations." The delegation has to be in writing and does not change the principle that the political responsibility lies with the minister.

Ms. Gigantes: Yes; and in cases where anyone is in any doubt, it will go to the minister for a decision.

Hon. Mr. Scott: Certainly. But I doubt you have trouble with the proposition that the release of mechanical driver information, say, might be delegated by the minister to the chief of that bureau.

Ms. Gigantes: And a lot more than that, I hope.

Hon. Mr. Scott: The way I envisage it working is that when a member of the Legislature, or some another person, thinks a bad decision has been made by that official, he will elicit the fact that the person was acting as the minister's delegate under subsection 58(1). In effect, the minister then has to answer for it: "Why did you delegate the right to make a bad decision?"

Ms. Gigantes: Yes. Does anyone else have any questions?

Mr. Chairman: Apparently not.

Ms. Gigantes: I have another question; it is on clause 2(1)(b), and I am still on page 3. As I understand the government's current plans, the number of bodies that would be covered by clause (b) in the definition of "institution"--aside from the ministries of the government of Ontario--would be about 120, as I counted them. Is that correct?

Mr. McCann: Roughly speaking, it would be 150.

Ms. Gigantes: Is that of about 700?

Hon. Mr. Scott: I presume about 700 are in the schedules. But as you will remember, the schedules--I forget under which act they are passed--run from 1 to 4. They run in terms of diminishing governmental control, by and

large; so that schedule 1 agencies are, for all practical purposes, alter egos of government, although they may be separated in the commission. Schedule 4 agencies are ones that are much more remote from government control, but in which government has some input, such as the appointment of a board member.

While we were prepared to accept freedom of information for ourselves and for those we controlled in the real sense, the difficulty we had was in determining where the dividing line was. In my opening statement, I indicated that the dividing line was between schedules 2 and 3 but that there were some discrepancies the committee might want to examine.

For example, the Workers' Compensation Board for some reason is a schedule 3 agency, but it was our view that it should be an agency to which freedom of information applied. On the other hand, the Ontario Provincial Courts Committee is a schedule 2 agency, but it is probably not one to which freedom of information should apply. That was a judgement we made.

I would be grateful for the committee's view on this when it looks at the commissions. The homework for the next assignment could be to look at that list; then you could come back and ask, "Why is the following board not included?" or "Why is this board, which should not be submitting to freedom of information, included?"

Ms. Gigantes: Another interesting question that might be asked at this stage is on the amount of moneys that flow to many of the institutions not covered in the bill. I am thinking of the small list we were given in the green paper on equal pay for work of equal value. There was a breakdown of the amount of a budget for municipalities in Ontario, for example--the average for hospitals and so on that flowed from the provincial government's coffers.

Hon. Mr. Scott: Again there is the same kind of problem of control. Some agencies will be fully funded by government, and a lot of them will be in schedules 1 and 2. At the other extreme, there are agencies to which the government makes a grant of \$1,000 a year, say, which otherwise function entirely on their own. It was not thought that we should extend freedom of information to those agencies.

Ms. Gigantes: One could have a great debate about that. Perhaps we could be provided with a list of the funds that flow, on average, from the provincial government by way of grants to hospitals, universities, community colleges, boards of education and municipalities; those would be the major ones.

Hon. Mr. Scott: Are you asking for the amounts of the grants, or the fact that very substantial funds flow?

Ms. Gigantes: The proportion of the budgets of those institutions, on average. You have some of that information printed in the green paper on equal pay for work of equal value, and I suspect the people at the Ontario women's directorate may have done a little more work than got printed in that paper; so it may be easily available.

Hon. Mr. Scott: Can I leave it this way, that we will see what we can find? I take it that what you want is not the fact that they get grants or transfer payments but something about the extent to which--

Ms. Gigantes: Something that is going to prove my case.



Mr. Chairman: Is that straightforward enough for you?

Mr. McCann: Can I make one point about schedules 1 to 4? They are devised by Management Board for managerial purposes and attempt in decreasing order to establish the agencies and the closeness of their relationship to the Ontario government.

Ms. Gigantes: I understand. That will not be my argument.

Mr. McCann: The schedules are far from an exhaustive list of all bodies that receive public money in some form.

Ms. Gigantes: I know; they are two different questions.

Hon. Mr. Scott: Can I leave it this way? I understand you are asking for this information. I understand the argument you are going to make. I hope the argument is not going to succeed, but I do not want to prevent you from making it.

Can we provide this information in two lots? First, we will submit to you the information that is readily available or can be readily obtained. At this stage, I do not want to put 15 people to work collecting information.

Ms. Gigantes: It will not take that, I am sure.

Hon. Mr. Scott: Do not be sure.

Ms. Gigantes: We know what it is for education, for example, and there are figures printed for municipalities in the green paper. I would like all members of the committee to share that.

Mr. Sterling: I would not want 15 people heading off trying to collect very detailed figures. What would be important for me in the decision would be, as Ms. Gigantes is saying, the percentage of the total budget that is coming out of the provincial government's coffers. Even if you have to make an experienced guess and then explain to us why you cannot--

Hon. Mr. Scott: I understand the point of it. We will see what we kind find readily.

4:20 p.m.

Mr. Sterling: I imagine the city of Toronto has extremely different figures from those of some of the townships in my own riding, in terms of the amount of--

Hon. Mr. Scott: Let me give you an example. Everybody knows that government makes substantial transfer payments to municipalities, of which there are hundreds in the province. To answer the question as to what proportion of the financing of each of those municipalities is provided by the government would be very difficult.

Ms. Gigantes: That is not what we are asking.

Hon. Mr. Scott: You might want to consider whether you want the act to extend to municipalities before you have that information.

Mr. Chairman: The question probably is, can you give us a list of everybody out there who gets substantial provincial funding?

Hon. Mr. Scott: That is everybody living in the province.

Ms. Gigantes: And, on average, what proportion of their budgets come from the provincial government? We are not talking about each municipality.

Mr. Chairman: You do not want the individual breakdown; you want to know that municipalities get, by and large, from 50 per cent to 80 per cent of their budget from the province.

Ms. Gigantes: It is not that high; it is in the green paper.

Mr. Chairman: It would be close to that. That is what we want. That is not difficult, a short list. See how we can expedite things?

Mr. Mancini: The chairman should not intimidate the witness.

Mr. Chairman: He does not look too intimidated to me.

Mr. Sterling: On behalf of my party, let me say that if there is a great deal of difficulty and you are having to spend a lot of time, give me a call and I will try to accommodate those efforts in terms of producing information.

Hon. Mr. Scott: Thank you. We will report on that when we can.

Mr. Chairman: Are there any other questions on this first part?

Ms. Gigantes: Do you mean on section 2, on the definitions?

Mr. Chairman: I do not want to restrict you to section 2.

Ms. Gigantes: I have more on the definitions.

Mr. Chairman: Okay.

Ms. Gigantes: I am pleased that we have defined law enforcement, but I do not know what it means. Can we have an explanation of what clause (b) means? What kinds of investigations or inspections that lead or could lead to proceedings in court would not have a penalty imposed as a possibility?

Mr. McCann: Civil actions, for example; an action for damages is the example that was specifically in our minds in including the words "penalty or sanction."

Ms. Gigantes: Does the definition as a whole include the activities of game wardens, fishery inspectors and whatever they call them?

Mr. McCann: Yes, I think it would to the extent they are investigating an infraction of the regulation or the act that might lead to some penalty in the nature of a prosecution, revocation of a licence or something such as that. In some cases, there may be activities that do not lead to a penalty or sanction, although I cannot give a good example.

The basic answer is yes, when they are investigating or inspecting for an infraction of the statutes they are authorized by law to enforce, they would be conducting law enforcement activities within the meaning of clause 2(1)(b).



Hon. Mr. Scott: We have used a broad definition here, as is apparent. There will be cases where members may think that, even given that definition, the breadth should be cut down. I would hope we would do that not by altering the definition but when we come to the substantive sections of the act. Let me tell you why. The breadth of this is designed--

Ms. Gigantes: I agree with you.

Hon. Mr. Scott: I might as well put it on the record. I hope I do not lose you as I do.

The purpose of the broad definition is to include within law enforcement the Ontario Human Rights Commission, for example, police complaints and so on, so that the privacy provisions of the act will apply to them. If there is a case where you want to cut down--let me put it the other way; I am speaking like a government official--where you want to expand the release of information, then I hope you will consider doing that when you come to the substantive provisions of the act.

Ms. Gigantes: When we look at personal information, we have two clauses. Clauses (b) and (f) seem to me to be related, or potentially related. Clause (f) says that personal information is "correspondence sent to an institution by the individual." Clause (b) includes, among other things, information related to financial transactions.

It seems to me that those could relate, in a very broad way, to cover an awful lot of information to which it might be very desirable to have public access.

Hon. Mr. Scott: The same argument really applies. We want a broad definition of personal information here. If, when we come to the substantive provisions of the act, you think that there should be disclosure of a certain kind, notwithstanding that the information is personal, that can be dealt with in the body of the legislation.

Ms. Gigantes: What would be the implications for Bill 14 under clause (d)?

Hon. Mr. Scott: Which is Bill 14?

Ms. Gigantes: Bill 14 is the Support and Custody Orders Enforcement Act, 1985, we passed earlier this year.

Bill 14 does not imply that there will be a court proceeding and a penalty in those cases. If somebody were asked to enforce Bill 14, the proceeding would not be covered under "law enforcement."

Hon. Mr. Scott: As Mr. Ewart points out, that act specifically permits the collection of that kind of information, and is exempted from this act in part III.

Mr. Chairman: Anybody else?

Mr. Sterling: The definition of personal information is lifted out of Bill C-43. It is almost identical to the federal bill, and changes words back and forth. Have there been any problems with the interpretation of those definitions in jurisprudence? Has there been any criticism in the present sittings that are taking place on that?

Mr. McCann: There is not much jurisprudence. I believe there has been some problem raised, again, about the breadth of the definition, the fact that it is so wide. On the other hand, no one has really suggested that it should be narrowed very much. By its nature, personal information is something you do not want to define too narrowly. There is a fear that the privacy protection aspect will be lost.

Federal civil servants have encountered problems. When one is asked whether something is personal information, it is not always easy to answer. However, in concept, I do not believe there has been any major criticism of the definition in the federal legislation.

I think we have to live with the fact that there are always going to be difficult questions about particular circumstances.

Mr. Sterling: Under Bill 80, "personal information" did not take up the definition of personal information. It just said, "'personal information' means information in a record respecting an individual person in which the person is identified by name or is readily identifiable by other means." In my view, that is a wider definition than what you have.

4:30 p.m.

Hon. Mr. Scott: It is not a wider definition. Ours is wider, because you will see that our definition begins, "'Personal information' means recorded information about an identifiable individual, including," and then there are the categories. The categories are not exhaustive of what is personal information. They are there--I was going to try my Latin, Mr. Chairman, but in deference to you, I will not.

Mr. Chairman: Go ahead.

Hon. Mr. Scott: They are to clarify ex abundanti cautela, to specify clearly categories it was the legislators' intention to include, but it is not intended to be an exhaustive list. It will be open for people to say that information is personal information because it is recorded information about an identifiable individual, even if it is not included in one of those categories.

Mr. Warner: You make a distinction between personal information and a personal information bank.

Ms. Gigantes: We could change that quite easily. It could be "including, but not limited to."

Hon. Mr. Scott: Yes. I am troubled about that language, because "including" is used a lot, and if in one place you put "including but not limited to," and in the next place you have only "including," a certain kind of panic sets in among the lawyers about the difference you intended, when you did not intend any.

Mr. Chairman: Anything that causes panic among the lawyers is good.

Hon. Mr. Scott: The Treasurer (Mr. Nixon) tells me that.

Mr. Chairman: Is there anything else?



Ms. Gigantes: On the definitions?

Mr. Chairman: Yes.

Ms. Gigantes: In clause (b) of the definition of "record," we have a small change. This relates to on-line data. What kinds of regulations are you going to build up about on-line data? I cannot imagine.

Mr. McCann: That is difficult. The federal regulation which has to deal with a similar problem, I believe, says something to the effect that the record shall be produced by information normally used, and so on, where it would not interfere with normal operations of the institution. I do not believe there has been any judicial or commissioner interpretation of that. We gather from the federal officials that the issue has not come up very often. They have not been asked to produce records in very many cases. I guess there have been a few disputes.

Mr. White: There have been very few requests.

Mr. McCann: Very few requests relate to records that are somehow not physically there but could be produced from an existing data base. Therefore, there is not much experience.

Ms. Gigantes: Am I correct in remembering that there is another section which talks about the ability of the institution to produce the information without throwing the institution upside down?

Mr. McCann: There is a section that says a request must identify the information. It is subsection 24(1), "...shall provide sufficient detail to enable an experienced employee...upon a reasonable effort, to identify the record."

Ms. Gigantes: No. That is not what I was thinking of.

Mr. McCann: There is a regulation-making power that picks up that part of clause (b) in the definition of "record."

Ms. Gigantes: We may come across it.

Mr. McCann: Yes.

Ms. Gigantes: I remembered it, and I may remember wrong.

Mr. McCann: This part of the definition of "record" and the corresponding regulation-making power are the parts that create the requirement in some circumstances to produce a record that is not physically in the form in which the person asks for it, but can be produced relatively easily.

Ms. Gigantes: I am still curious about "subject to the regulations." I want to know what that might mean.

Hon. Mr. Scott: Perhaps we can highlight that point and analyse why we put it there.

Ms. Gigantes: It is new, so you must have had a reason.

Mr. Warner: Does that include videotape?

Mr. McCann: "Record" includes just about everything.

Mr. Warner: It does in clause (a) but not in clause (b).

Ms. Gigantes: There are two different categories. Clause (b) involves on-line data.

Can we get from your ministry a list of the comparable restrictions in subsection 2 about people who have "been dead for more than 30 years"?

Mr. McCann: There is a provision in the federal Privacy Act that is very similar, except that it says 20 years.

Ms. Gigantes: Yes. What do the Americans do?

Mr. McCann: I am not sure about that.

Ms. Gigantes: What do the Australians and the Swedes do? I remember there was some discussion about that at the federal conference.

Mr. Chairman: That is right. We know nothing about the Australians and the Swedes.

Mr. Warner: Put it on the list.

Hon. Mr. Scott: We hope the committee's own researcher will begin to get active in this research exercise.

Mr. Warner: Exhaustively.

Hon. Mr. Scott: That subsection is new. It provokes in my own mind some concern, not only about the propriety of a time frame and whether it should be 10, 20 or 30 years, but, rather, about its propriety at all. It concerns me that information about the honourable member that will be prevented from disclosure to the public under this act, notwithstanding her demise--which will not occur for many years--will be available at a later stage when I will ask for it. There is that problem of--

Ms. Gigantes: It is not going to bother me.

Hon. Mr. Scott: It is not going to bother you but it may bother your children.

Ms. Gigantes: There is nothing they do not know about me. Nothing.

Hon. Mr. Scott: I cannot accept that. Will you get something about you that will make my case? There is an important point here. I am persuaded that the interests of history, the interests of analysis, statistics and research depend on opening up government to personal information at a certain point, but I am troubled about where the point is. I am grateful for the committee's views.

Ms. Gigantes: Have we had any aggrieved deceased persons appeal this point with the federal law?

Hon. Mr. Scott: No, but you will recall the celebrated case where the descendants of William Ewart Gladstone sued for libel when some unpleasant things were said about him after his death.



Ms. Gigantes: What was said?

Hon. Mr. Scott: It was said that he consorted with street criminals.

Ms. Gigantes: Was the suit successful?

Hon. Mr. Scott: The suit was not successful for technical reasons, as I recall, because of the nature of the laws of libel.

Mr. Mancini: What was your grandfather like?

Hon. Mr. Scott: My grandfather has been dead for 30 years, although I remember him well. I now face the reality that any private information the government has about him can be released on request. I am not saying I object to that. I do not object to it or this section would not be in the bill. There is a kind of policy question that I think is important, so that, when we pass the bill, we understand what we have done.

Mr. Warner: I understand what you are saying. Obviously, it is an arbitrary figure and you had some reason to choose 30 as opposed to any other number. If I am not mistaken, our jurisdiction said to use 20.

4:40 p.m.

Hon. Mr. Scott: You are right. We did not follow the federal model; we added 10 years to it. The effort was designed to shield contemporaries in the general sense so that there would be no practical risk that the widow or widower of a person would in his or her lifetime see private information released about his or her spouse and so that the chances of children seeing private information released about their parents would be remote.

Of course, there are always cases that 30 years will not cover, but fewer cases than 20 years will not cover. The object was to focus on contemporaneous relationships. I may have to put up with the fact that personal information released for historical research about my grandfather should be in the public domain. I perhaps should not have to put up with the fact that a spouse is exposed to the same possibility.

Mr. Warner: That sounds reasonable.

Ms. Gigantes: Does this mean that when the Archives of Ontario, or whatever archive, receives from the people who hold it material that contains personal information about a deceased person, they have to hold it for 30 years?

Mr. McCann: No. Can I make a couple of comments? When we get to section 21, we will see that there are a lot of circumstances besides this in which personal information can be released, notwithstanding that it may be sensitive, embarrassing or whatever else.

Mr. Mancini: What is the purpose of having that kind of information?

Mr. McCann: It is hard to deal with section 21. Section 21 is a big chunk of this bill and it is hard to sum it up in two or three words. It is trying to create a balance. There will be some cases where, even though there is a privacy interest, the public interest is stronger and vice versa. The head of the institution is going to have to make those decisions.

Mr. Mancini: I am not interested in David Warner's drinking buddies.

Mr. Warner: Why not?

Hon. Mr. Scott: First, to deal with the honourable member's question, there is a new section 59a that deals with the archives. Subsection 1 states, "This act does not apply to records placed in the Archives of Ontario by or on behalf of a person or organization other than an institution."

Your private papers can be deposited with the archives, I presume, on any terms which the archives will accept. Nothing changes with respect to the deposit of information from outside. That is important. If you did not have that, a lot of people would be reluctant to give to the archives stuff which they now give only on condition that it is not released for 100 years. We want to encourage people to give material to the archives.

The other point is that there is now in government information of use in an archival, statistical or research sense that is not releasable now because it would identify an individual, contrary to the privacy regime, but which you may want to release at a later date to complete the statistical or historical understanding of whatever the problem is. That is why 30 years was picked. It is no better than 35 and no better than 25.

Mr. Sterling: Can I get this straight? It goes from a ministry into the archives.

Hon. Mr. Scott: It may or may not go from the ministry into the archives.

Mr. Sterling: If it is in the ministry, I know it is 30 years. If it goes to the archives, what is the total time?

Mr. McCann: The archives will be governed by the same provision. The information will cease to be personal information 30 years after the person dies. There is no special setup for the archives as far as government records are concerned.

Mr. Sterling: Okay.

Mr. Chairman: Is there anything else on this?

Mr. Warner: Section 4.

Mr. Chairman: Can we proceed to take some questions on part I, administration? Mr. Warner has a question on section 4.

Mr. Sterling: I have a general question. Are you going to provide us with some written material on what these definitions mean or on what each section means? I asked for a couple of sheets on them.

Hon. Mr. Scott: The answer is that we are not. The written material means what it says. We have available, as you know, the Williams report, which in some sense is a help. However, the committee will have to grapple with the language to see whether it goes as far as the committee wants it to go or whether it goes too far, a view to which I am quickly coming.

Mr. Sterling: I refer to your explanation of the definition of "personal information." If you look back at Bill 80, which I mentioned before,



and the white paper associated with it, my advice from ministry officers at that time was exactly the opposite of what you have given me today. I was told that my definition of personal information was wider than the definition you gave.

Hon. Mr. Scott: It is not really fair--I do not mean it is unfair to raise it, but I do not think it is not a fair comment to refer to advice you might have received from the officials of my ministry in some previous age. Although the officials of my ministry, Management Board and so on have been very helpful in drafting this act, it was not initially drafted by the ministry.

Mr. Sterling: No, but it is your responsibility.

Hon. Mr. Scott: Yes. The responsibility for the language of the act is mine, but it is an act that was in some measure prepared before we entered government. It is based on our own reading as an opposition caucus of what the law should say, as reflected in Mr. Breithaupt's bill. Many modifications have occurred, but it is not a bill for which in the traditional sense the scribes of the ministry are responsible. It is a bill we brought to government. I asked: "How do I get this introduced? Where do I go?"

Mr. Sterling: I am not blaming the scribes in your ministry. I am blaming you in terms of saying that your scribes are probably right. If you differ with your scribes, tell us so.

Hon. Mr. Scott: I defer to you because you were in a ministry much longer than I have been. However, it seems to me that people in a ministry do not advise you how the language should be drafted, and which is better or worse. You advise them of what you want to say and they tell you how to say it. I have told the people in my ministry what this government wants to say and they have told us how to say it. You may have told them that you wanted to say something different and they would have told you how to say that. That is their job.

Mr. Sterling: I told them I wanted as wide a definition as possible for "personal information."

Hon. Mr. Scott: I told them I wanted a wider one than you had in your bill. With the assistance of the caucus draftsman, they effectively said that the way to get that was to use the definition "means recorded information about an identifiable individual, including." That is as wide as the mind of man can make it. However, you add the "including" so that there will be no doubt about the cases at the fringe of the definition. For example, blood type might be something that a court would conclude was not "recorded information about an identifiable individual." To put that beyond doubt, we put in the "including" section.

Mr. Sterling: Your scribes are giving you different advice than they gave me.

Hon. Mr. Scott: They are getting different instructions now. When we come to the appeal procedures and the procedures about the role of cabinet, you will see it.

Mr. Warner: The important aspect is the question that was asked.

4:50 p.m.

Mr. Chairman: Is there anything else on this? Can we go to part I?  
Mr. Warner had a question on section 4.

Mr. Warner: I would like to explore the concept of the commission. We chose to have one person who would be both information commissioner and privacy commissioner. Knowing that there is a conflict, that they are two separate and distinct roles, you somehow feel they can be blended. I wonder why it does not appear more appropriate to have two commissioners, a privacy commissioner and a freedom of information commissioner.

Hon. Mr. Scott: First, as I understand it, the federal government has two and that is certainly a reason to consider doing something else. Second, they are not two different functions in the vast majority of cases; they are the same function. The person who seeks information, who seeks a file or document, who makes a freedom of information application will many times, perhaps more often than not, be resisted because the information is private to an individual. He may be resisted because it is a trade secret or so on. A large number of the objections to release are not going to be raised by government as much as by individuals who say, "I do not want Mr. Warner to have this information about me because it is private." In that sense, the privacy and information roles are inextricably linked. One person would have to make decisions on the competing demands of privacy and release of information in those cases.

The privacy commissioner has another function, as I understand the act: to regulate the way in which private information is collected by government. The question is, is it necessary to create a second agency for that role? It is our view that it is not. That monitoring role--that disciplinary role, if you will--could be conducted by a separate agent, a privacy commissioner. However, it should not be because the information commissioner is going to have a built-in knowledge and experience. There is nothing in his role as information commissioner that will inhibit him from seeing to it that government complies with the collection rules and so on.

Unless my colleagues have anything to add, in essence that is the reason we thought these two jobs not only could but also should be done in one office.

Mr. Warner: Do you not see a conflict in the basic role of the commissioner?

Hon. Mr. Scott: I see no conflict.

Mr. Warner: Is there no conflict in handling requests to release information, and at the same time, having the power not to release information?

Hon. Mr. Scott: He has to decide that. If you apply to the information commissioner for a bundle of correspondence relating to a problem in your municipality, it may be that in that bundle there will be some irrelevant and perhaps private information about me. Government information is not always collected in an orderly fashion. That is a freedom of information question for you; it is a privacy issue for me. We are going to end up fighting before the commissioner about whether the release of information should take precedence over information that relates to my private life. We are going to be joined in struggle before this official. The information



commissioner is inevitably going to have to deal with privacy issues. I would guess that a large number of the disputes will have to do with privacy.

Having said that, you will ask what else the privacy commissioner would do under this act. The other thing he would do, and it would be a major responsibility, would be to regulate, control, monitor and discipline the government in the way it collects information. He would see to it that what it collects is pursuant to a statute, that it collects only according to the rules set out in the act. There is nothing in that role of collection supervisor, as far as I can see, that is inconsistent with his role as information commissioner; we hope.

Mr. McCann: May I comment? The approach of the Williams commission was that there is going to be a conflict between protection of privacy and freedom of information in some cases, but that having one office to weigh the balance is better than having two offices because with two offices you are going to have jurisdictional disputes, the same question being decided in different ways and so on. They felt it was important that one office do this balancing.

Mr. Sterling: I have a question along the same lines as the one Mr. Warner put. How do you view the commissioner's role from the point of view of the citizen? I have always viewed this whole matter from the point of view of the man coming off the street and not from the point of view of how the commissioner and the government would interact. That was always secondary in my mind. How it would relate to the man on the street is of more importance to me.

When an individual comes to the access commissioner--let us separate them for this point--can he expect assistance from that access commissioner to get information? The other point is, when an individual comes forward and has received a third-party notice, can he expect assistance from the privacy commissioner in protecting his data from the third party?

Hon. Mr. Scott: It is very difficult to talk about the role of the commissioner in abstract terms. It is very helpful to envisage what the office will look like when it is in place. The kind of person I think will be a good commissioner will be a person who has not been in government. For example, Robert Macaulay would not be a good information commissioner because he has been a minister of the crown.

For the Conservative side, if you were nominating someone, Dalton Camp might be an excellent information commissioner. He is aware in a very refined and full sense how government functions. He is not a person who is remote from the process, yet he has a great sensitivity to individual rights and to the necessity for disclosure.

On the other side, Donald MacDonald, if he did not already have a job, would be a good information commissioner. He has never been a minister of the crown, yet he has a sensitivity to the necessity for openness and to the necessity for privacy and for efficiency in government. You will have someone such as that who will establish his office as he wants to do it.

Ms. Gigantes: Or she.

Hon. Mr. Scott: As he or she wants to do it.

It will fundamentally have three components. One will be the

adjudicative component in which he does the deciding about what should go out and what should not. The second will be the mediation component. It is very important. We want the information commissioner's staff to have a role in twisting arms so that we do not have to decide every one of these cases as if it were the greatest thing since Sullivan and Cromwell. The third component will be the regulation of government information uptake. I presume he will have a staff that will assist him to do those things.

5 p.m.

When a citizen wants information and does not quite know how to get it, we are obliged to prepare an index of subject matter and documents, which will be available on a ministry basis, that will tell the citizen in a fairly precise way which ministry to go to. Then he makes a request to the ministry. We are in the course of developing, and this is an administrative question, a manual that will--

Ms. Gigantes: This is not the question that was asked.

Hon. Mr. Scott: I thought it was.

Ms. Gigantes: No. I think we understand the process.

Hon. Mr. Scott: I am sorry. I am told I am not helping you.

Mr. Sterling: Will a citizen be able to walk into the office of the information commissioner and ask for help in getting a record?

Hon. Mr. Scott: There is a provision in subsection 24(2) that says: "If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection 1."

Mr. Sterling: As you are explaining it to me, it is in the hands of the citizen to carry the full process through.

Ms. Gigantes: No, to initiate it.

Hon. Mr. Scott: No. He fills in a form.

Mr. Sterling: I realize that, but the whole contact process is between the citizen and the ministry. The information commissioner does not serve in an ombudsman-like role.

Hon. Mr. Scott: I do not accept that. It is a different process, but it is not fair to describe it in that way. Before any information can be provided to anybody--

Mr. Sterling: I am questioning it. The problem in my later question will be, if he has the final decision, if he is sitting there in judgement, how can he then be the advocate?

Hon. Mr. Scott: To answer your question, I have to describe how I believe it will work under the act.

Before any information can be released, someone has to come forward and say that he wants it. A citizen pops up at the door of the ministry. We are preparing an index so that he will not have to go from ministry to ministry.



We are going to help him focus in by saying, "It is not the Ministry of the Attorney General you want, because it has to do with police; it is the Ministry of the Solicitor General." He goes to the Solicitor General. He then makes a request for all records that have his name in them in the past 10 years, or whatever. If the request is defective--that is, if it is inadequately precise or does not identify accurately the documents we have--the ministry is bound to assist him under subsection 24(2).

If the ministry does that, all will be well. If it does not, I am certain it is going to get it from the information commissioner in the first case when it appears the whole thing has come up because the ministry did not give reasonable co-operation. That is how it is going to work. We believe we can develop a scheme so that subsection 24(2) will be fully complied with.

Mr. Sterling: What happens if the minister says no and there is going to be a fight?

Hon. Mr. Scott: Says no what? No document?

Mr. Sterling: No document.

Hon. Mr. Scott: If the minister says no, the citizen--

Mr. Sterling: I know the process, but what role is the information commissioner going to take? How much hand-holding can he do to help the citizen through the process?

Hon. Mr. Scott: If you are the citizen and the minister says no, obviously nothing happens if you go home. However, if you appeal to the commissioner, as you are entitled to do, he "may authorize a mediator," under section 47, "to investigate the circumstances...and to try to effect a settlement of the matter under appeal."

I envisage many instances, in which the minister says no to a citizen, where there has never been a real meeting of minds about what the request is. An astute information commissioner will say: "This fellow did not tell you very clearly what he wanted, but you did not make any effort to find out what he wanted and you responded to his theoretical rather than to his real request. I want both of you to come to my office tomorrow morning. We are going to try to sort this out." That is what the mediator does. If the mediator settles it, the information will be released.

Mr. Sterling: I would imagine that in a lot of cases the minister might say, "I will not release this because there is personal information in this record," so you have citizen A and citizen B. What role does the information and privacy commissioner have in that circumstance? Does he hold both hands?

Hon. Mr. Scott: He mediates that.

Mr. Sterling: Does he hold both hands?

Hon. Mr. Scott: He can mediate it. I should not have to tell a member of the Conservative caucus what "mediation" means. We discussed it at considerable length.

Mr. Sterling: I should have to tell you.

Mr. Chairman: Are you still a member?

Hon. Mr. Scott: A former member of the Conservative caucus.

The mediation process is one that can be done with considerable flexibility. It may be that there will be one mediator or it may be that the information commissioner will put two or three mediators on it so that they can each talk to each of the components in the dispute.

They try to get a settlement in which the citizen either recognizes that the information is clearly not producible--and he can have his appeal if he wants to, but the language of the act is pretty clear on that--or in which the minister is persuaded that this information should be released.

Mediation can be useful in that sense. It is short; it does not have to be cumbersome; it has no rules of a fixed type. We believe that kind of mediation can make a lot of accommodations that will be useful for the average citizen. If the mediation does not work to everyone's satisfaction, anyone can still appeal to the commissioner. He will then decide the matter, having seen the documents, and applying the language of the act as if it were being judged for the first time.

Mr. Sterling: However, he will already be aware of the stories coming at him from one or both sides.

Hon. Mr. Scott: He may or may not. I do not believe the information commissioner is going to get a report of everything that went on in the mediation process on a day-to-day basis. He will have experienced mediators on his staff who will do this work.

For example, at the Ontario Labour Relations Board, they are not called mediators, but referees or conciliators. When a case comes before the board and there is a dispute about the definition of the bargaining unit or the number of employees in it, these people are sent out by the board to see whether they can get an agreement. They get the two sides in one room and discuss it. Very often, they get an agreement. Then the board does not have to decide that part of the case.

Very often, they do not get an agreement. The company or the union says, "We do not care; we are not accepting that proposition," and then the board decides it.

Theoretically, I suppose the board might look at what the mediator attempted to do, but it does not have the time, nor is it necessary to do so. When mediation fails, the board decides. I think it will work quite well.

Ms. Gigantes: The questions Mr. Sterling is raising are important. I wonder whether the minister would take a look at the two submissions dealing with this section, which rather impressed me. One was by Mr. Borovoy of the Canadian Civil Liberties Association, and it had to do with the length of the term.

Hon. Mr. Scott: The term of the information commissioner?

Ms. Gigantes: Yes.

Hon. Mr. Scott: What did he say about that?



Ms. Gigantes: He suggested it be lengthened, because the person who takes on the job should not be in the position of looking for a renewal of term, and thus looking for favour with the government of the day.

The second was Mr. Flaherty's suggestion that we consider a setup where no officer is appointed to be the assistant under subsection 4(4).

Hon. Mr. Scott: I am sorry. I missed what you were saying.

5:10 p.m.

Ms. Gigantes: Subsection 4(4) speaks of "an officer" to be the assistant commissioner. It was suggested that we perhaps think of two officers, one of whom would take on the privacy role and one of whom would take on the access to information role. I believe that setup might answer some of Mr. Sterling's concerns about what happens in the final analysis.

In a difficult case, it may be the minister who says, "No, I do not want to release this information." On the other hand, it may be a citizen, either professionally or privately addressing a matter of concern, who is looking for assistance in getting that information. He suggested to us that for the commissioner to have two assistants, one who took on a privacy role and another who took on the access to information advocacy role, would be very useful.

Hon. Mr. Scott: I am entirely open on the question of the length of the term. The Ombudsman is a 10-year appointment, as I understand it. I am sensitive to what Mr. Borovoy says. On the other hand, coming from a framework in which people have long appointments, when they are answerable to nobody, I am not big on long appointments because sometimes the appointments do not work out all that well.

Ms. Gigantes: This is true.

Hon. Mr. Scott: You sit around waiting for the appointment to expire so you can get someone in who can do the job.

Ms. Gigantes: We might set up impeachment procedures.

Hon. Mr. Scott: The question of time is an important question.

On the other question, my instinct at the moment is rather against it, because I want the commissioner to have the full authority to decide all matters that are within the authority of his office, not only the judicial but also the administrative type of matters. If the commissioner wants to play a large role in directing the method whereby private information is collected, rather than delegating that to a deputy, I think he should be allowed to do that. It is really very difficult for us to say at this stage what the appropriate organization of his office might be.

Ms. Gigantes: It is spelled out in subsection 4(4).

Hon. Mr. Scott: The purpose of 4(4) is to create a statutory officer who can perform his duties if for any reason he is unavailable in the short term. It is really to create a deputy, rather than to divide up the work.

There is a lot to be said for trying to lay down an administrative framework in advance, but I would prefer to let the commissioner decide that,

because I think he is going to learn in very short order a lot about his responsibilities that we cannot begin to know. Let me put it this way: I believe, and I may be wrong, that one of the much overlooked but most important features of this bill is the collection-of-data provisions. We tend to focus on the freedom of information and getting stuff out.

Ms. Gigantes: This bill does.

Hon. Mr. Scott: We have part II. I think part II, keeping information out, is in the long run likely to be--

Ms. Gigantes: The more important.

Hon. Mr. Scott: Yes.

Ms. Gigantes: That is correct.

Hon. Mr. Scott: What you are dealing with there is an office that is going to regulate the way government, right down to the junior civil servants, collects information. In the early years the information commissioner may say: "That is where my major focus has to be. I have to do the other stuff. I have to see that the mediation works. I have to play the major role in adjudication, but I do not want to divest myself by virtue of some statutorily imposed administrative scheme of responsibility." That is the first point.

The second point is that when you divide it into an information deputy and a privacy deputy in the statute, you lay out the opportunity for civil war. You have two deputies, both of whom have a statutory responsibility. You are creating two because you think they may have different responsibilities. You are giving each a statutory responsibility. That is the weapon with which they are going to try to clobber each other. One of them will say this is a privacy matter; the other will say it is an information matter. I want those things decided by the commissioner. I do not want deputies saying, "I have a statutory responsibility just as you do, commissioner, and I do not accept what you say."

Ms. Gigantes: Then you have hired the wrong commissioner.

Hon. Mr. Scott: I want the commissioner, especially the first commissioner, to be as good a one as we can get, someone who has some of the characteristics I described earlier and who has full authority to devise his or her office.

Mr. Mancini: That person is already the Attorney General.

Hon. Mr. Scott: Are you kidding?

Experience will tell whether his plan has been right.

Mr. Sterling: We do not have any other individual in Ontario who is looking out for the privacy interests of the citizens of Ontario. It is very infrequently the primary issue in a debate. It is usually secondary or even further down in terms of the issues involved. How do you envisage an information and privacy commissioner going out into the community and talking about privacy concerns? On the other hand, how does he or she go out into the community and talk about getting hold of information?

Hon. Mr. Scott: All you can say is how you envisage the office.



Following up on Mr. Mancini's suggestion, if I were the commissioner and if I were concerned about privacy, I would not spend the first year or two going out and talking to the community. I would spend the first year or two bringing in the ministers, their deputies and their staffs and saying: "Look, I want to know exactly what information you are collecting and how. I want reports quarterly, or whenever, assuring me that it is being collected in accordance with the rules established under the act. Just so there will be no doubt about it, we are going to do spot monitoring of these ministries and agencies without notice to make sure that the collection--which is the key feature--is done in accordance with the act. If our monitoring reveals that it is not, there will be a row and you will be found in breach of the act."

I want him to be very conscious that citizens whose information has been legitimately collected and who want to resist the release of that information should get assistance. If I were the commissioner, one of the things I would consider establishing, in addition to the mediation capacity, would be an advocacy component in the information commissioner's office. I would not want to tell them all to go get legal aid. I would want to be able to have a sort of arm's-length advocacy bureau where, if people had problems either getting the information out or restraining its release, they could get some preliminary assistance. I would want to look at various ways to do that. A legal aid clinic right in the premises or an arm of the bureau might be ways to deal with it.

Mr. Sterling: One of the problems that I see with our present setup of the privacy commissioner, even under the federal act, is the apparent restriction on his ability to influence the private sector as well as the public sector.

I realize this act is for the public sector. However, I would like more focus placed on what the private sector is doing in terms of caring for personal information. That is the greatest reason for a division of the two offices. If a privacy commissioner had some mandate to speak to the private sector and to cajole the private sector into the formation of privacy codes, cleaning up the contractual relationships with their clientele and bringing to the fore privacy concerns that are out there, hidden and not brought forward because they are often viewed as irritants. Therefore, you forget about it because it is a two-bit item with respect to your life, but it is a two-bit item with respect to a million lives and should be brought to the fore.

Your view of the role is probably more restrictive than that. Perhaps you cannot address both in the same act.

5:20 p.m.

Hon. Mr. Scott: No. You are envisaging a role in which the commissioner's office, in some form, should be a missionary office designed to carry the spirit of this legislation to the private sector. I do not see anything wrong with that. I hope the commissioner, if he has time, will spend a lot of time talking about the importance of both privacy and the release of information.

My guess is that the private sector is not unaware of those problems and is more likely to respond if the Legislature decides what it wants to do. For example, I would have thought an information commissioner, not a privacy commissioner, would be telling the nursing homes of the province to make information about their financial statements available annually to the public.

The reality is that this kind of change is decided upon as a matter of policy and is enacted by the Legislature. A missionary going out to those groups will be listened to, but it is a difficult process to--

Mr. Sterling: My experience in the field during the past three or four years--

Hon. Mr. Scott: Did you vote for that resolution? I have forgotten.

Mr. Sterling: Which one was that?

Hon. Mr. Scott: Nursing homes releasing their financial statements.

Mr. Sterling: I cannot recall whether I voted on it. I do not know whether I was in the Legislature.

Hon. Mr. Scott: I think the Conservative caucus voted against it, so you may have voted for it.

Mr. Sterling: Was it a private member's bill?

Hon. Mr. Scott: It was a resolution, some time ago.

Mr. Sterling: I was probably not in the Legislature at the time.

Our record with respect to the private sector has not been good in the last three or four years.

Hon. Mr. Scott: Or our record with respect to government. This bill is designed to develop a system for government. I hope it will be a model of what the private sector will do. The time may come when we will tell the private sector, in a precise way, what it must do, but this bill is designed to deal with government information.

Mr. Sterling: We may have to come back to this. We will be coming back to this anyway, because we will be talking about the particular roles of both offices later on.

I want to ask a very quick question. A "responsible minister" means a minister of the crown designated by order of the Lieutenant Governor in Council under section 3. If you are dealing with matters about the wine industry in Niagara, which minister would you refer to: the Minister of Agriculture and Food (Mr. Riddell) or the Minister of the Environment (Mr. Bradley)?

Mr. Chairman: That is facetious.

Hon. Mr. Scott: Let me clarify it.

Mr. Chairman: Short answer. The first one today.

Hon. Mr. Scott: I take it that is not a question. Those matters, as you know, are adjusted from day to day.

Mr. Sterling: That is what I am worried about. To whom does a poor citizen go when he wants to find out about these things?



Mr. Chairman: More adjustments appear to be forthcoming. Any other questions? I look about the room.

Ms. Gigantes: I hope the minister will think again about the question of two deputies. It seems to me a useful motion.

Mr. Chairman: Is there anything else in part I, administration, that you have questions about? If not, perhaps we could move to part II. We are flying right along here. This is access to records, exemptions, and so on. Are there questions on any of that?

Ms. Gigantes: No. I would like to note on section 11 that the Canadian Environmental Law Association felt that "grave" was an unnecessary adjective.

Hon. Mr. Scott: In all probability, section 11 has caused as much debate in the submissions as any other section in the act. On the one hand, there are those such as the environmental law association which find it restrictive because of the use of the word "grave." On the other hand, there are a number of groups which have provided information to government, often voluntarily, which feel it is wrong to compel its disclosure without their being allowed to play a part, no matter how fragmentary, in the process.

An adjustment has to be made between those two competing things. There will be a risk. First, section 11 is designed to get information out there, and in the typical case, quickly. It is a case in which we have recognized there may not be room for an orderly process because the hazard is real and relatively immediate.

If we have a report in our hands that indicates the end of the world is tomorrow, to be useful to anybody who may be concerned about it, that information has to be released before tomorrow, so that thou can repent of thy sins. To take this extreme example further, if the information is that the end of the world is two years from now, there may be room for a process in which the person who voluntarily gave over that information can exercise his right not to have it released because it will reflect badly on him or whatever.

What we were trying to do is create a sense of the immediacy of the hazard and its severity, because that is the feature of the section that cuts out the obligation to hear the other side.

Ms. Gigantes: If we had an environmental health or safety hazard to the public, which had been voluntarily disclosed by a party to the government, it would not have to be qualified as grave before I would wish to see disclosure under section 11.

Mr. Sterling: One problem is the location of the section in the act. I ask you to consider lifting it out of here, and I think the environmental law association assumed that section 11 was responding to a request for a record.

Hon. Mr. Scott: No.

Mr. Sterling: That is not what it is.

Hon. Mr. Scott: No. That is why it is where it is. It is right up front. Apart from the general disclosure section, the statement of principle, which is section 10, it is the first obligation. The obligation here under

section 11 is not triggered by any citizen coming forward. It is enormously important and a major feature of the act that this imposes on the head, the responsible political officer, the obligation to disclose if there is no request at all.

Let me give an example.

Ms. Gigantes: We understand.

Hon. Mr. Scott: The point is critical. Take poisons in wine, for example. If it comes to the attention of the minister that there is a health hazard, the dimension of which he is not entirely certain because it is on the fringes of science, in connection with wine, some governments would simply sit around and debate whether that was--

Ms. Gigantes: Grave.

5:30 p.m.

Hon. Mr. Scott: Under this section, the minister is politically responsible for the judgement that is made. He will answer for it. This imposes an obligation on him.

Ms. Gigantes: He will answer for it if anybody finds out, if he considers it grave.

Hon. Mr. Scott: If you leave "grave" out, you are compelling him. The point of this is its compulsion on the minister. He has no option when he finds it is within "grave environmental." There can be no excuse.

Ms. Gigantes: In the case you just raised, he does not know whether it is serious.

Hon. Mr. Scott: If he does not know and thinks it might be serious, it is a foolhardy minister who refuses to reveal it.

Ms. Gigantes: Then we should write down where he thinks it might be grave.

Hon. Mr. Scott: That is what it says, he is to make the judgement. The judgement is on his head.

Ms. Gigantes: Why do we not say if he has reasonable and probable grounds that it will reveal an environmental health or safety hazard to the public?

Hon. Mr. Scott: Let me put it this way. There are all kinds of remote environmental health or safety hazards that may cause such trivial injury that you would oblige him to release every piece of information he has that would cause a hazard, even if it is 100 years down the line.

Ms. Gigantes: He will not object to releasing it if it is 100 years down the line.

Hon. Mr. Scott: But the information may not be his information. In this process he is dealing with other people's information. In section 11, we have allowed the owner of the information, who may be a businessman--



Let us take another example. It comes to the attention of the government that a bomb will be placed on the Toronto subway tomorrow morning. Any minister would judge that to be a grave environmental hazard. There would not be a debate in government about whether that information was to be released. There would not be a hearing about whether it would have to be released. There would be no question about whether, by releasing it, we would be injuring the person who had given it to us.

Ms. Gigantes: The wine example is much more pertinent to my problem with "grave."

Hon. Mr. Scott: That is what this government just did.

Ms. Gigantes: I want to signal how I feel about "grave." I do not think it is necessary.

Mr. Chairman: The signal has been received.

Mr. Sterling: You realize this is a straight lift out of Bill 80. That particular section was at my own request, to put the government in legal as well as political jeopardy if it did not disclose information hazardous to the public.

In listening to the Canadian Environmental Law Association and talking to them, I feel it needs placement in the act. The section also needs to make clear to anybody reading the act that it is without a request.

Hon. Mr. Scott: I am not committed to its placement in the act, because it is an obligation of the minister and wherever it is placed in the act--

Mr. Sterling: I am just telling you that, in their experience, because it came after section 10 and you were dealing with--

Mr. Morin: The word "shall", on his own motion.

Mr. Sterling: Whatever. I am just raising that.

Mr. Chairman: We will let the scribes work at that.

Mr. Sterling: I suggest it is placed before section 10 so it is separate from the other part which deals with responding to a request. I will talk later about the third party notice. No doubt we will also have a debate on that.

Ms. Gigantes: Why did you add "or its committees" in section 12? What is a committee of the executive council?

Mr. McCann: May I respond to that? In some places, the second reading version of the bill refers to the executive council or its committees; in some places, simply to the executive council. We felt the intent of the reference was to include committees.

Committees of the executive council make up a fairly small list, including Management Board, policy and priorities, and the cabinet committee on justice. There are a number of others. They consider matters that are on their way to cabinet.

It seems that the intent of section 12 was to create the same exemption for proceedings before those committees as before full cabinet. The original wording was somewhat inconsistent.

Hon. Mr. Scott: In many cases, not all, the cabinet decision will be taken by its committee. For example, the justice committee meets at regular intervals; it considers submissions, and makes a recommendation to cabinet. It does that as a convenient way for cabinet to deal with it. You cannot have 20 people or more considering every single item.

Cabinet has the right to say it does not accept the recommendation, but many of the recommendations are inevitably accepted. It is a committee of the cabinet. It is a breakdown of the cabinet into a smaller unit to recommend to the full cabinet what should be done with an issue. If you allowed committee information to be released, you would have, 99 per cent of the time, information that is before cabinet.

Ms. Gigantes: Would advisory committees with cabinet members on them, or those that report to ministers, be cabinet committees?

Hon. Mr. Scott: I do not think so. I cannot think of an example, but I am sure they would not. These are committees established by cabinet, made up of cabinet members.

Ms. Gigantes: Is that spelled out anywhere? We now know what an executive council is.

Hon. Mr. Scott: Some of them are. Management Board of Cabinet has its own statute, but the cabinet committee on justice is set up by an administrative decision taken by cabinet to have a committee to deal with certain issues emanating from certain ministries. The list is fairly short, but they are set up in different ways.

Ms. Gigantes: I find it puzzling that we should say "cabinet and its committees," or "executive council and its committees," when anything that goes to the executive council and has come through a committee is going to be inaccessible already.

Hon. Mr. Scott: First of all, the committee system--and there may be other language we can use--comprises committees of cabinet ministers.

Ms. Gigantes: Anything they do would be covered by the general executive council.

Hon. Mr. Scott: No. The argument is that if you have an exemption for the executive council, it might not cover a committee such as Management Board, which is a committee of cabinet that has a statute of its own, or policy and priorities, which is a statutory creation. There is no intention to cover committees that are made up of noncabinet members but may have one cabinet minister on them for some reason.

Mr. Sterling: How do you do your regulations now? Under our government, one cabinet minister, and the parliamentary assistants, sat on that particular committee.

Hon. Mr. Scott: The cabinet has a regulations committee.

Mr. Sterling: Do you not have the parliamentary assistants?



Hon. Mr. Scott: Our committees are Management Board, policy and priorities, justice, social policy, economic policy, legislation and regulations.

Ad hoc committees of cabinet may be established from time to time in the way that any other organization establishes them. Four ministers are sent off to consider what should be recommended to cabinet on a particular project.

5:40 p.m.

Ms. Gigantes: Race relations.

Hon. Mr. Scott: I forgot about race relations. Actually, there are more, now that you remind me. There are cabinet committees on race relations, native affairs and northern development. Cabinet committees have been set up for a short term for specific purposes.

Ms. Gigantes: It seems to me that if you look at clause 12(1)(e), any kind of "record prepared to brief a minister...in relation to matters that are before or are proposed to be brought before..., or are the subject of consultations among ministers," you are covered. I do not like how well you are covered, and I still do not see why "committees" is there, but let us leave it at that.

Mr. Chairman: I think he says he is just being explicit.

Ms. Gigantes: It is double jeopardy.

Mr. Chairman: Yes.

Mr. Sterling: I hate to put you all out to this degree, but when I was on the cabinet committee on legislation, there were two or three occasions when we stopped a number of pieces of legislation dead in their tracks for various reasons.

If that was really the liberation of cabinet, in terms of recommending that these things be stopped in their tracks--the reasons for turning down that piece of legislation were within that particular committee, and were just verbalized when we got to the cabinet table. Should that be public?

Ms. Gigantes: Within 20 years?

Mr. Sterling: It is within 20 years, is it not?

Ms. Gigantes: Yes.

Mr. Chairman: They would be exemptions now, so they would not be public documents, and you would not have any way of getting them.

Ms. Gigantes: Exactly.

Mr. Chairman: Excuse me for interrupting here. I am not convinced that anybody in this world would be prepared to loosen up cabinet documents. Previous bills did not do that. They are very much like caucus documents; members of each caucus here would want some privacy in the preparation of their deliberations.

Ms. Gigantes: What about a decision of executive council that remains secret for 20 years?

Mr. Chairman: What would you want done with that?

Ms. Gigantes: Twenty years is an awfully long time for a decision to be secret.

Hon. Mr. Scott: Apart from the point the chairman has made, you have to recognize that when the act is passed there will be a number of things that ministers--because we are all venal from time to time--will not want to disclose.

You do not want to turn the governmental process from a written process into an oral process. There is no doubt that if we were cynical, we could have a discussion in cabinet that would produce no freedom-of-information release, because we would be very careful not to put anything down on paper. We could shield discussion in that way, then, and there is nothing wrong with that, I suppose, except that it does not encourage the efficient and proper administration of government.

It would be wrong if we all went in without any papers analysing what we were doing, and tried to run it off the tops of our heads to avoid freedom of information. To avoid that damage to the process, you just exempt it for 20 years. Of course, 20 years is merely a moment in the history of governments.

Mr. Chairman: Are you suggesting, Evelyn, that the exemptions would exist, but that at some point the cabinet would be forced to do something that would be a matter of record and be released?

For example, if a cabinet dealt with a matter and said yes or no to a piece of legislation or policy proposal, there would at some time be access to that decision. You could then find out whether, in 1983, the government of the day dealt with the matter and said, no, it was not going to proceed with that.

Ms. Gigantes: If you look at clause 12(1)(a), it says that a decision of the executive council is going to be secret for 20 years.

Mr. Chairman: You suggest you might want to consider that something such as the Board of Internal Economy's deliberations are private but its decisions are minuted and the minutes are made available. You could get access to them.

Ms. Gigantes: Yes. The breadth of section 12 concerns me. Conceivably anything relevant to a cabinet decision, at any point in its consideration, can come under these exemptions.

Hon. Mr. Scott: The intent, with some minor modification, is to say that the information going to cabinet and its committees for the purposes of deliberation is off limits. Frankly, I cannot think of another government in the world that has ever proposed operating on any other system. I may be wrong; there may be examples.

Ms. Gigantes: I understand the principle involved here. I have no objection to the principle that the governmental process works best in having some confidentiality about the process at the executive level.

The question is what you include in the information you consider relevant and private to the executive council and how long the exclusion applies to a matter relating to government decisions or formulation of government policy, for example.



Hon. Mr. Scott: Leaving aside the time limit, excluded under that rubric are agenda, minutes or record of deliberations; a record containing proposals or recommendations made to cabinet; background explanations for cabinet; a record used for, or reflecting, consultation among ministers of the crown on the matter of government decisions; and a record prepared to brief a minister of the crown, or cabinet.

Mr. Chairman: The current government has decided to release certain documents the previous government never released. Would this exemption forbid the present government from releasing records kept by a previous government?

Ms. Gigantes: Yes.

Mr. Chairman: I read it that way.

Hon. Mr. Scott: No. I do not think it follows. It depends on the record. Let us take, for example, a poll prepared for a minister.

Mr. Chairman: Most polls are done for that.

Hon. Mr. Scott: You have to ask yourself, "Is that an agenda, minute, or other record of the deliberations of cabinet?" No. "Is it a record containing proposals or recommendations for cabinet?" Probably not. "Is it a record containing background explanations or analyses of problems?" It may be that.

Mr. Chairman: It is certainly a record prepared to brief the minister of the crown in relation to matters before, or proposed to be brought before, the executive council or committees, or the subject of consultation among ministers relating to government decisions, or the formulation of--

Hon. Mr. Scott: Then, so be it. If you are going to release information prepared by a minister of the crown to brief himself for a cabinet debate, then you tell the public, one, what cabinet was discussing, two, how part of the argument shaped up and, three, what minister took what position.

Mr. Chairman: Yes. I see what you mean.

Hon. Mr. Scott: It is a problem about democratic government. I do not know where you draw the line.

5:50 p.m.

Mr. Chairman: I wonder whether there is a way to consider a closer definition of a cabinet document so cabinet would have the choice of saying, "We designate that to be an official document of the cabinet covered under these privacy sections and it will be kept secret for 10, 20 years or whatever.

Other materials which might be made available could be released by a subsequent government or someone could make an application for them. We could go through the whole list of things we think should be covered. We went through a long debate about whether polls taken by a ministry at public expense on public opinion should be public documents. For example, my reading is that this would be considered an exemption under the act.

Ms. Gigantes: That is right.

Hon. Mr. Scott: May I add one word? Before you get into clauses (a),

(b) and (c), you have to get into the opening words, which state, "A head shall refuse to disclose a record where the disclosure would reveal the substance of the deliberations...including."

The broad definition is that the documents prevented from release are documents that "reveal the substance of the deliberations of an executive council." If it does not reveal the substance of the deliberations of the executive council but just ends up on the table, then it is releasable and is not exempt under section 12. The commissioner will be considering that. If you want a poll that was taken, you make your application. If the minister says that reveals the deliberations of cabinet--it is hard to imagine how it would, but if it did--

Interjections.

Hon. Mr. Scott: No, it is hard to imagine.

Mr. Warner: You were not in the previous cabinet.

Hon. Mr. Scott: How would the poll "reveal the substance of the deliberations of an executive council or its committees"? That, of course, is what the information and privacy commissioner is going to do. He is going to look at the poll and he is going to make the decision unencumbered by what the minister has done and he is going to say, "Does this reveal the substance of cabinet deliberations?" In some cases it might; in some cases it might not.

Mr. Sterling: For instance, let us say there are deliberations about a policy. This is one thing that I am disagreeing vehemently about with some former people in my cabinet on freedom of information and how information should come out of cabinet.

Ms. Gigantes: You mean people in your former cabinet. You do not mean former people in your cabinet.

Mr. Chairman: No, I think he meant former people. I am just trying to assist.

Mr. Sterling: At any rate, there is a deliberation and you make an announcement of policy, so it is public that you were deliberating whatever issue. Why should the public and the parliamentarians of Ontario not have access to the same analyses, the same facts and the same information produced by the public service for the ministry or cabinet to consider in making its decision?

Hon. Mr. Scott: They do. Look at clause 12(1)(c), for example. The basic issue is you cannot reveal anything that reveals "the substance of deliberations." That means what was said in cabinet. Under clause 12(1)(c), it says, "a record containing background explanations, analyses of problems or policy options submitted, or prepared for submission, to the executive council...before those decisions are made and implemented" is exempt. When a decision is made and implemented, that section loses its force.

Ms. Gigantes: Except some of the best decisions of government, and the most interesting to the public, are where there is no implementation.

Hon. Mr. Scott: Of course, and that you should not have.

Ms. Gigantes: I beg your pardon?



Hon. Mr. Scott: That you should not have. It is not our scheme of government that the cabinet should operate like the Legislature. The essence of this form of government is that the executive branch is different from the legislative branch.

Ms. Gigantes: I think you misunderstand my meaning. I do not read subsection 12(1) the way you do.

Hon. Mr. Scott: This is not the first act in which we have had this type of disagreement.

Ms. Gigantes: This is true.

Hon. Mr. Scott: The celebrated Equality Rights Statute Law Amendment Act.

Ms. Gigantes: If you would like to have it read the way you just described it, you should look for phrasing that makes your intent clearer, because that is not what section 12 says to me.

Hon. Mr. Scott: We know the area with which we are troubled.

Ms. Gigantes: It may be simply a matter of phrasing. I quite liked your description of what it means, and if you can make it say that--

Hon. Mr. Scott: That is what it does say.

Ms. Gigantes: That is not what it says to me. If it is so simple to say it, let us say it simpler, because I do not read it that way.

Hon. Mr. Scott: You and I have a long way to go before either of us begins to apply that principle; that if it can be said simply, you and I should say it simply.

Ms. Gigantes: Certainly. I learned that at my father's knee.

Mr. Sterling: Why not put a positive obligation on the cabinet to release a document after a certain event has occurred? If there is a policy statement, or legislation is introduced, and a minister walks out of a cabinet meeting and says, "We have decided thus, as a result of a submission," why should that submission not be released?

Hon. Mr. Scott: The decision that cabinet has made is released. That is the announcement we make in the House, to the rapt attention of opposition members.

You want the other side of the debate released. I say this will reveal the deliberations of cabinet. You will find, if you got that, that the policy announced today on such-and-such did not meet with the approval of the following 11 ministers.

Mr. Sterling: No, no. That is not what I want.

Hon. Mr. Scott: We have agreed that you will get the analysis, the options and the background explanations. That will give you the heart of the case for and against, because it will give you the options.

There are four or five options in the adoption issue today. When that

policy is implemented, under freedom of information, you will get the various options that were put before cabinet. You will be able to say, "They did not even consider the really practical option, which is thus and so," or, "They had this option and rejected it, the turkeys."

Interjection: Who said that?

Hon. Mr. Scott: You would say that even if you did not have the options.

Ms. Gigantes: In subsection 12(1), why do we not look for a word or two taken from the minister's fine description of what it really says? That might solve our problem.

Mr. Sterling: Why do you not just put a positive obligation in terms of cabinet documents?

Hon. Mr. Scott: I think you have to be practical. If you put a positive obligation, do you really believe these things are ever going to be reduced to writing? Are you really trying to change the shape of--

Mr. Sterling: I do not mean the argument we have heard time and time again.

Ms. Gigantes: No, but if the substance of the deliberations of cabinet is the key trigger in section 12, let us make that stand out in 12.

Mr. Chairman: I think the problem is the way this is written. First, we deal with the exemptions. Then, in the next section, we deal with the exemptions to the exemptions. This is an odd way to proceed, I must say. I suspect we are going to wind up with not much more than the laughable tradition of providing compendiums, which have absolutely no information. They are not only vetted, they are sanitized.

Hon. Mr. Scott: If you said you wanted a freedom of information act, the first question would be what information you would release.

I would say, "I am going to release all the information of the following type." I would have a nice act that could say to the citizens, "Here is a list of the information you get." As Dr. Williams pointed out, that is exactly the wrong way to do it, because it restricts the flow of information.

The right way to do it is to say that all the information comes out--as in section 10--except for the following. The exemptions are going to expand the flow of information, not, as you might think, restrict it.

Ms. Gigantes: I have no problem with that. That is a reasonable way of doing it.

Hon. Mr. Scott: I am delighted.

Ms. Gigantes: I would like the introductory section changed so that it says what the minister just said.

Mr. Sterling: I have no problem with accepting that. If we can get your assurance, for instance, that polls, or a majority of cabinet submissions, are going to be revealed when a policy decision is being made, that is fine by me.



6 p.m.

Hon. Mr. Scott: The major assurance you have in this act for all time is that any judgement made by a minister will be reviewed on its merits by an independent commissioner who will be able to see all the material and form his own view of what should come out and what should not, secure in the knowledge that he is there for a while. At the end of the day, all definitions aside, that is what is going to make this work. To me, it is the key feature of the scheme.

Appeals to cabinet, and things such as that, are gone. An independent information commissioner, whether he is appointed for five or 10 years, is going to look at the documents. He is not going to be told about them or have them described to him in inflationary language. He is actually going to look at them. He can call witnesses to ask what part they played, how they fit in, and then he makes a decision on the merits without prejudging anything.

My fear, to which we will come later, is that you will allow from that information commissioner a full appeal to the courts. In other words, you will allow the courts to reverse the decision of the information commissioner on an appeal. What troubles me about that is if you think ministers of the crown are secretive, some of the most distinguished judges are not big in the information-flow business and the appeals will be taken by ministers.

Ms. Gigantes: That is why the judicial council is not listed here.

Mr. Warner: Are you going to look at some different wording?

Hon. Mr. Scott: Sure. I would be grateful for the advice of legislative counsel and committee members when we get into clause-by-clause about how to deal with this.

The Acting Chairman (Mr. Warner): Are we still on section 12?

Hon. Mr. Scott: Yes.

The Acting Chairman: Are there any more questions on section 12? Let us move on to section 13.

Ms. Gigantes: On clauses 13(2)(i) and (j), I have a lot of trouble figuring out what all these words mean. Clause (i) reads, "A final plan or proposal to change a program of an institution...." This is the step that is to be revealed in spite of subsection 1.

Hon. Mr. Scott: Yes. It must be revealed.

Ms. Gigantes: This stuff must be revealed. Clause (i) continues, "...or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the executive council or its committees."

Hon. Mr. Scott: You can get from my ministry a plan or proposal which has been developed by the staff of my ministry, which I have refused to carry to cabinet.

For example, if you are concerned that I have not been carrying to cabinet some proposal for--

Ms. Gigantes: The advancement of women?

Hon. Mr. Scott: If you are concerned about a proposal for the advancement of women--wrong ministry, but we will correct your freedom of information request--you then make a request for it. If it has gone to cabinet you will not get it under subsection 12 if it reveals the deliberations of cabinet.

Ms. Gigantes: Section 12.

Hon. Mr. Scott: But if it did not get there because the minister was no good, I presume it might be a plan or proposal under clause (i) and you would get it. You would then be able to say in the House: "You would not take this. This plan was developed in your very own ministry and you would not take it to cabinet for decision. Answer that for me. Your protestations, Scott, fall on deaf ears."

Ms. Gigantes: Again, then, I am going to suggest that for section 13 to work in the way I think we would all like to see it work, we have to look very carefully at the introduction to section 12. Again, it all relates back. That is my comment.

Hon. Mr. Scott: I think that is a fair idea.

Ms. Gigantes: It is just you and me. Do you have any questions, Mr. Bossy?

Mr. Bossy: I am finished.

The Acting Chairman: Are there any questions on section 13? If that is finished, we will go on to section 14.

Hon. Mr. Scott: Could I draw to your attention one thing we will be discussing? Subsection 13(1) contains the first instance of "may refuse" as opposed to "shall."

Ms. Gigantes: Where is this?

Hon. Mr. Scott: Subsection 13(1): "A head may refuse to disclose." In subsection 12(1), it is "shall refuse," so there is no option. You will recall my statement at the beginning. The importance of "may" is that it permits the head to release something, even though he would be entitled to say it cannot be released.

For example, you might come to me, to the ministry of which I am the head, and say, "I understand you have been working on a program." I say, "Yes." You say, "I want it," and I say: "No. Under subsection 13(1), it is advice or recommendations to me and does not fall under any of the exemptions in subsection 13(2). It is not one of those things." Therefore, I am entitled to say you will not get it. We go to the commissioner to judge which of us is right. He looks at it, and decides where it fits.

As the head, I can short-circuit all that by saying: "I recognize you are not entitled to have it. That is my view. I could stand on my rights, and I believe the commissioner would uphold me, but I am not going to. I am going to let you have it anyway." That is the importance of "may." When "shall" is used, you do not have that option, as head.



Ms. Gigantes: I understand, but the only difference is that you have not gone to cabinet to get permission.

Hon. Mr. Scott: No. The use of "may," in the sections where it appears, is enormously important. It will be a very useful thing, because it means a minister does not have to rely on his rights. He can make the judgement himself about whether to rely on his rights as being trivial, silly or restrictive. He can say: "I would beat you. I would win. I could keep it away from you--but take it anyway." The reality is that some pieces of information could fall into that category.

Ms. Gigantes: Yes, and there will be ministers who will behave that way.

Hon. Mr. Scott: Who will release it to you?

Ms. Gigantes: Yes, and not go to the executive council under clause 12(2)(b) to ask for permission.

Hon. Mr. Scott: Then you will get disclosure.

Ms. Gigantes: Yes.

Hon. Mr. Scott: That is what you want.

Ms. Gigantes: Exactly.

Hon. Mr. Scott: That is why "may" is so important.

Ms. Gigantes: Indeed.

Hon. Mr. Scott: I simply draw to your attention one other fact that will come up later. There are those who say there should be an appeal to the commissioner from this discretion: "I could stand on my rights, but I am going to let you have it anyway." Some people say there should be an appeal to the commissioner on the "I could let you have it" part. If there were such an appeal, the minister would always stand on his rights. In effect, in practice, you will have turned "may" into "shall."

If I am prepared to grant an indulgence, if you want to put it that way, and if I recognize there is an appeal from my failure to grant an indulgence next time, I will never grant an indulgence again. I will stand on my rights. That will come up later when we come to the famous appeal section.

6:10 p.m.

Ms. Gigantes: Why was the word "matter" in clause 14(1)(a) chosen rather than something like "proceeding" or "investigation"? What is a law enforcement matter?

Hon. Mr. Scott: I do not know the answer to that. I suppose "matter" is a broader word than "investigation." "Investigation" contemplates the prelude to laying a charge. In most cases the investigation is complete when the charge is laid, but the law enforcement matter is not complete because the trial is ahead.

The Acting Chairman: I read the section to mean a citizen cannot get anything with respect to the police. I do not know what material it would be possible to obtain.

Hon. Mr. Scott: Let us be candid in dealing with this. With respect to law enforcement matters, the major applicants for information from government are generally people who are either going to be prosecuted or are in the course of being prosecuted. The law has in place an elaborate procedure to regulate the fair disclosure of information on that subject. In a civil trial it is called examination for discovery and production of documents, and the crown is bound by it in any case where the crown is a party. In a criminal case it is usually called the preliminary inquiry; one has gone on for six years with the accused getting information about government under this court-regulated system.

I take it we do not intend to shipwreck those court rules or expand or contract them. If you want to change the court rules about disclosure, you had better move directly by looking at the rules of court and our traditional justice system. Do not move indirectly by allowing defence counsel, or counsel for the accused, the right to get information the court has refused, or might refuse, them indirectly. I am sure I can find exceptions, but it is accurate to say that not much about pending investigations and trials will be released. The people who will want that are usually involved in those cases, and I do not blame them; you cannot run the justice system if that is disclosed.

Ms. Gigantes: I would feel happier with clause (a) if we used a word such as "proceeding" or "investigation."

Hon. Mr. Scott: Let us look into that. I am troubled about "investigation," because it refers to stage one.

Ms. Gigantes: Perhaps two words.

Hon. Mr. Scott: I would want to look at "proceeding," because it may have a precise meaning in law

Ms. Gigantes: I just do not like "matter."

Hon. Mr. Scott: I am not sure about "a trial." A trial is probably a proceeding.

Ms. Gigantes: Anything you want to describe about the activities of a farm warden, a fisheries agent, etc., could be considered a law enforcement matter.

Hon. Mr. Scott: Mr. Ewart makes an excellent point. For example, many investigations do not come to trial; they are put off because there is nothing there. If you take the word "proceeding," there has never been a proceeding in those cases.

Ms. Gigantes: Then you say, "a proceeding or"--

Hon. Mr. Scott: Anticipated proceeding.

Ms. Gigantes: --"investigation." Clause (b) refers to interfering with "an investigation undertaken with a view to a law enforcement proceeding."

Hon. Mr. Scott: Leave clause 14(1)(a) with us. I understand your point. If I can summarize it, it is a natural human aversion to a word of such generality as "matter."

Ms. Gigantes: Especially in this context.



The Acting Chairman: Is there anything else in section 14?

Hon. Mr. Scott: A lot.

Ms. Gigantes: With respect to clause 14(1)(d), when we look at "a confidential source of information in respect of a law enforcement matters," I am again worried about "matter."

Hon. Mr. Scott: Let us leave "matter." We will look at that.

Ms. Gigantes: I wonder whether we cannot safely narrow clause (d) a bit and suggest that the information furnished by a confidential source necessarily be inaccessible only if the information would identify the source.

Hon. Mr. Scott: That is what we intend.

Ms. Gigantes: We could have "which could be furnished only by the confidential source."

Hon. Mr. Scott: That is intended. We want to preserve the identity of the source if the disclosure would disclose the identity of a confidential source--not on anything, but in respect of a law enforcement matter--or if it would disclose information furnished only by the confidential source. The reason is that if it were furnished only by the confidential source, the people who wanted to find out who that confidential source was, to get him, would know where it came from.

Ms. Gigantes: That can still use a little bit of refinement.

Hon. Mr. Scott: Polishing.

Ms. Gigantes: Yes. We have an overlap in clause 14(1)(e) with another section; I have forgotten which section. Certainly, one is not allowed under the current drafting of the bill "to endanger the life or physical safety of...any person" by providing information.

Hon. Mr. Scott: You accept the principle but you say we have duplicated it. Let us look into it; that is a fair point.

Ms. Gigantes: In clause (f), when you are depriving "a person of the right to a fair trial or an impartial adjudication," does that include a law enforcement officer?

Hon. Mr. Scott: The trial of a law enforcement officer?

Ms. Gigantes: Sure; or an impartial adjudication.

Hon. Mr. Scott: Yes; any person.

Ms. Gigantes: If any person is described in clause (f), then any person is described in clause (e). Clause (f) may stand, but if clause (e) means to identify that as a principle for any person, we do it in another section.

Hon. Mr. Scott: I do not understand that. I understand your point about overlap of clause (e). Is that the limit of your point about clause (e)?

Ms. Gigantes: Yes.

Hon. Mr. Scott: Then what is your point about clause (f)?

Ms. Gigantes: My point about clause (f) is that it obviously includes a law enforcement officer.

Hon. Mr. Scott: I see.

Ms. Gigantes: Why do we have to put this under law enforcement? That is a general provision for all persons; so why should it be in this section? Should it not be in a section that applies, along with the life and physical safety of all persons, to all persons?

Hon. Mr. Scott: I see what you are saying. Leave that with us. You are saying that, just as clause (e) is a general point of departure for a whole lot of matters, clause (f) is a general point of departure in the same way. They might both be taken out of here and put in separate sections. I understand the point.

Ms. Gigantes: On clause (h), presumably what is being addressed here is the question you raised before, the preparation of a proceeding. You would not even reveal to the person from whom a record had been confiscated what that record was?

6:20 p.m.

Hon. Mr. Scott: We are not talking about only the person. We would not tell anybody in the world that information. Persons whose own property is interfered with have certain rights; for example, under the federal wiretap legislation, there is a requirement that notice be given to persons at a certain stage if their telephones have been wiretapped.

Ms. Gigantes: Suppose the police come to my house and take certain documents. I am not familiar enough with what would be involved. Do I only find out what documents they have taken if I have a mess of a filing system when I go to preliminary disclosure?

Hon. Mr. Scott: The police would be operating under a search warrant. There has to be a return to the search warrant before the justice of the peace signs it, in which, in effect, there is a list provided.

You will recall the issue about which the Globe and Mail and the newspapers are concerned, which is not the extent to which you can have that information but the extent to which they can publish that the material was seized from your house.

Ms. Gigantes: I might very much wish them to publish.

Hon. Mr. Scott: If you and anybody else named in the warrant consent, that material can be published.

Ms. Gigantes: But the head of the Ontario Provincial Police, or whoever, may refuse to disclose.

Hon. Mr. Scott: Freedom of information has nothing to do with that. Those are rules that respect the utilization of search warrants, which are now the law. The only question of disputed law is not whether you should find out what has been seized from your house, but whether, over your objection, the press should be allowed to publish that your house was raided and this material taken.



Ms. Gigantes: No. The case I recall most clearly was that of a woman whose house had been raided. She wished the paper to publish which documents had been taken.

Hon. Mr. Scott: Let us take an example. First, this is criminal law, and we could not change it if we wanted to. To make the issue clear, however, let us take the fact that the police raid Mrs. X's house. They search for and find documents that belong to Y. They are obliged, after having done that, to make a return to the search warrant which describes that Mrs. X's house was raided and documents belonging to Y were seized. If there is a criminal trial, all that may come out in the wash further down in the court proceedings.

The critical case is where there is no criminal trial because no case is made out. The newspapers, in this celebrated case, want to have the right to publish an article that says your house was raided by the police in the course of a fraud investigation. They want to do that even though you would prefer not to have it published. The present law, which may be too broad, as the Manitoba court has now found, says the person whose house is raided and the person whose objects in the house were seized can both allow it to be public if they want to. If either of them, however, does not want his name in the paper, he can resist. I am just summarizing here.

The paper's case is that it can publish that whether these people like it or not. The case balances the right of the newspapers to publish everything, which until this moment I thought they probably did, against the right of somebody who is not involved in a crime at all to allow it to be said of him that his house was raided in the course of a mammoth fraud investigation.

If it appears in the paper that your house was raided in the course of a mammoth fraud investigation, someone reading the paper is going to think you are connected with it, and you may not be at all. This is why that privacy section is in the Human Rights Code and that is how it works. Whether the courts will uphold it, we do not know yet in Ontario.

Ms. Gigantes: That section creates some confusion in my mind, but I do not want to belabour it.

Hon. Mr. Scott: No, but that is the issue. I anticipate we will have a decision on that question at the first level of the Ontario courts before we are finished the deliberations on this bill.

Ms. Gigantes: I have the same problem with clause 14(1)(i) as I do with clauses (e) and (f). It seems to me this should not come under law enforcement. It is a general provision that would apply to Ontario Hydro, for example. I am going to be much happier if we can narrow these categories under law enforcement. They are so intimidating.

Hon. Mr. Scott: I hear what you say and at the moment I have no aversion to proceeding the way you suggest. We will look into how it can be done.

I have one lingering reservation. If we make a general exception to all access, the commissioner is going to have to apply it across the board in the general way. If you pin it on a particular exemption, as is done here, there is the prospect that the next exemption will get a different kind of interpretation. For example, to "endanger the security of a building," which is found in the criminal law section, may be interpreted differently in the

case where Hydro seeks to apply it as a relatively trivial defence, if someone asks Hydro for the release of its building plans for this glass tower over here.

Ms. Gigantes: That is all in cabinet documents.

Hon. Mr. Scott: Of a previous government.

The Acting Chairman: Some of them are in Switzerland.

Hon. Mr. Scott: My instinct as commissioner is that the person should have the building plans. It is not related to a law enforcement matter. I do not think Hydro should be allowed, by and large, to say, "The security of our building will be endangered if we show you the plans, because some thief will get them and know how to get in at night."

That will damage the security of the building, there is no question about it, but I do not think clause 14(1)(i) is designed to prevent the disclosure of that kind of information. On the other hand, I think it is particularly appropriate in the disclosure of law enforcement information. I hear your point, and it seems to me those are the competing issues in the way you describe them.

Ms. Gigantes: Yes. Perhaps we are looking at a clause 14(1)(i) which is too general. We agree that perhaps it should not be in this section and that we should be a bit more specific about what we mean.

Hon. Mr. Scott: The other problem Mr. Ewart points out is that subsection 14(3) is built into this, and we will be coming to that. It is called the confirm-or-deny provision. People will want to make a specific request in a law enforcement matter, "I want from your files a statement of witness X in the following case." By and large, the policy of the act compels the minister to say: "We have such a statement but we are not releasing it to you because it is exempt. It is privacy information," or what have you.

This is built in so the head can say, "I will not tell you whether I have that information," because quite often what the person wants is not the information itself. He knows it and he wants to know whether you have it. That is purely a law enforcement consideration.

Ms. Gigantes: That is right.

Hon. Mr. Scott: Hydro should not be able to give that response. Even if you built in clause 14(1)(e) and the others somewhere else, I think you need subsection 14(3) to apply to them in law enforcement matters.

Ms. Gigantes: This is true, but I wonder whether clause 14(1)(i) should be dealt with in this manner. I am thinking particularly of Ontario Hydro.

Hon. Mr. Scott: Yes.

Ms. Gigantes: Is it not illegal to facilitate the escape from custody of a person who is under lawful detention?

Hon. Mr. Scott: It is probably illegal to aid and abet him in doing so. This is directed to the release of a record that would be an asset in that process.



Ms. Gigantes: Why does its existence have to be open to confirmation or denial?

Hon. Mr. Scott: An accused person in custody will request an account of the security system of the jail. If you are obliged to provide it to him--

Ms. Gigantes: That is not what I am saying. Why should that be related to subsection 14(3)? When we permit a head to refuse to confirm or deny the existence of a record, we should do it very carefully. We have done it in a general sense in section 14.

Hon. Mr. Scott: I agree with you, and that is the difficulty of preparing a general law. You have to consider all the potentialities.

Someone in a prison may want to know whether the guards are armed. I am making up an example because I am reaching at the moment. He may ask for the record of the armaments issued to such and such a place. He may not want it; he may only want to know whether it exists. That will give him the answer. In law enforcement particularly, it is often not the actual information someone wants but to know whether you have it.

Ms. Gigantes: I understand.

The Acting Chairman: I am sorry to interrupt. This is delightful, and we could go on for many hours, but it is 6:30. The committee understands that if the House is sitting next week, we will be sitting and will continue this procedure. If the House is not sitting, neither is the committee.

Hon. Mr. Scott: I know this is not of interest to everybody, but it is important for two reasons. We get the shape of the bill and the preliminary issues out, and we can begin to look at the problems you have in your mind.

Ms. Gigantes: Yes, and we can get a sense of what you intend, and then I will have a better appreciation of the bill.

The Acting Chairman: If the House is sitting, perhaps it is preferable that we attempt to get through this without a huge gap of time in case we do not come back to it until September.

Ms. Gigantes: Maybe we should think of asking for a Monday night session. We are at section 14 now and we have a fair way to go.

The Acting Chairman: I am a little reluctant to deal with that now.

Hon. Mr. Scott: None of this time is wasted, no matter how long it takes.

Ms. Gigantes: If we can do it all in one chunk, it is worth while.

The committee adjourned at 6:32 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

WITNESS EXPENSES

ORGANIZATION

CLERK OF THE LEGISLATIVE ASSEMBLY

WEDNESDAY, JULY 2, 1986





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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, July 2, 1986

The committee met at 4:06 p.m. in committee room 2.

EXPENSES OF WITNESSES

Mr. Chairman: Let me clarify some things on the record for members of the committee. We had originally intended to deal with Bill 34, the Freedom of Information and Protection of Privacy Act. We cannot deal with that matter while the minister is in the House carrying another bill. As we do have some other business to transact here this afternoon, what I thought would be reasonable to do is to proceed with the other business, on the faint hope that the bill being put before the Legislature might be dealt with rather expeditiously. If that is not the case, we will not proceed with freedom of information this afternoon at all.

We do have some other business that could take a short while to conduct, and I suggest that we proceed with it. When we conclude with that business, if the bill is through the House upstairs, we will adjourn for a few moments and give the Attorney General a chance to get down here. If it is not done, we will adjourn for the afternoon.

The committee did agree to pay expenses for Ken Ruben, who was invited by the committee to appear on Bill 34. We have had a request from Professor Flaherty, who also appeared of his own volition, but not at the invitation of the committee. He has put forward a bill of around \$200. We had agreed previously to pay expenses at the request of a witness before appearing and we had invited that witness to appear. Is it your pleasure to pay expenses for this gentleman?

Mr. Turner: I think we have a completely different set of circumstances, if I understood what you said that he came of his own volition rather than at the request of the committee. Just off the top of my head, I would question this. I think we may be setting ourselves a dangerous precedent.

Mr. Chairman: Yes. The distinction would be that the committee invited one person to attend; so it was our initiative to ask him to come. On the other occasion, the gentleman in question volunteered to appear before the committee; so it is simply a question that he has submitted invoices here. No other witnesses that I am aware of have asked for assistance.

Mr. Turner: He did not make any suggestion when he was here or prior to being here.

Mr. Chairman: I do not recall it.

Mr. Bossy: Traditionally, I would imagine that the only case has been where an invited witness would appear and would have to be paid. As I understood before, if that is the only time they are paid, I would say we do not pay that bill.

Mr. Chairman: Okay. Does anyone want to argue the other side of the issue?



It would be a bit unusual to offer to pay after the fact. There is ample precedent where you invite someone to attend at a committee function, you may also offer to cover some expenses. We will send him our regrets.

#### COMMITTEE SCHEDULE

I have two other matters I want you to consider this afternoon that may affect your life this summer. We have a motion that has been put that has referred the matter of René Fontaine's compliance with the conflict-of-interest guidelines to the standing committee on the Legislative Assembly for review and report to the assembly without delay. Loosely interpreted, that is an instruction from the House that we should get on with this.

The second matter that will come before us, I am told, and I am trying to forewarn you, is that, we had an announcement today that the Clerk of the House intends to resign. The report we forwarded to the House on the new procedures for establishing how such appointments are filled has not yet been adopted by the House, but I have some indication that the government is interested in using a process similar to that, if not that exact process.

That is the second matter that would require deliberation on the part of this committee during the course of the recess and is a matter that is rather important to the workings of the assembly. Those two matters, in addition to several other things, will be on the committee's agenda during the recess. We have agreed that Bill 34 can be stood over until September. Everybody's timetable is such that it probably will not work out much before then anyway.

That leaves us with whatever is left with the month of July and the month of August. We have one week of August, the first week, August 3 to 8, where we had made a commitment and are in the process of finalizing arrangements to attend a convention in New Orleans. It would be a little costly to interrupt those proceedings just now.

The second matter that you have and should consider is that in the last week of July the Canadian Parliamentary Association conference is being hosted here. That means that the committees of the House cannot sit that week because, frankly, they will have no place to sit. The conference will be using the assembly building for its sessions and the committee rooms are booked.

It comes down to the openings being, if we adjourned before then, about the third week in July, which may be available if the House has recessed by that point. Then we are into the second week of August. Depending on how you want to handle these matters, we may have resolved the problem by other events that have happened. I need some direction on what kind of time to ask the House leaders to set aside.

I suppose we could get rid of the preliminaries on the matter of Mr. Fontaine. It is conceivable, since he has agreed to appear before the committee, that could be done as soon as next week, or in the third week of July or at your pleasure. Then we would have, if you wanted to call other witnesses, ample time to give people notice to rearrange their summer schedules and to appear in front of the committee to see what kind of advice you may want to get and what kind of research you want to do on the background of that so that in the second week in August we would be all set up to go and actually to conclude that hearing. We would then move on to the Clerk's position.

Mr. Martel: I cannot quite follow you. You said August 2?

Mr. Chairman: The second week of August.

Mr. Martel: I will not be here.

Mr. Chairman: You may not be here, but the rest of the committee will be.

Mr. Martel: You may find there are not very many here.

Mr. Chairman: I am trying warn members of that. I am also trying to point out to you that the House has put a motion that says we will deal with that matter without delay, and that really means it would not be quite proper for us to set that over to the fall or any later than that.

Mr. Martel: Then we should start with it next week.

Mr. Chairman: I am seeking your direction today as to whether you want to proceed. He has agreed to appear in front of the committee. Under normal circumstances, that means we check our timetables and we invite him to come at his convenience before the committee. We are not issuing a Speaker's warrant here or anything like that. At this stage, as you know, with other hearings of this kind that we have had, the first attempt is made by invitation, and we try to accomodate people's vacation schedules, other commitments and a whole lot of things. If you want to go about it in a more formal way, we would move to a Speaker's warrant, in which case he would have a legal obligation to attend.

I have attempted to lay out the timetable for the summer. Frankly, it is not a pleasant one.

Mr. Bossy: I am serving on two committees. With the timetable you are talking about here, we are faced, as I see it, with not even three weeks, I believe, left for us to be in our own constituencies. We must live here all summer too. I understand there is a tentative schedule for the week of August 21.

Mr. Chairman: Yes. We have not concluded those arrangements. They could be set aside.

Mr. Morin: René Fontaine is my roommate. Does that create any conflict with my sitting on the committee?

Mr. Chairman: You should probably take a look at what this committee has had to say about conflicts, which is not a great deal. My personal opinion would be simply that it would be a matter of conscience on your part as to whether that constituted any kind of a conflict of interest. As you know, there is nothing in the standing orders about a conflict of interest except a simple opportunity for a member to declare that. I suppose if you felt there was a conflict of interest, it would be under standing order 23. It states that one has a right to declare a conflict, but whether one has a conflict or not is something which is decided entirely by the individual member. There are very few precedents to go by in the Legislature and there is no law governing it.

Mr. Morin: He is also my colleague.

Mr. Chairman: That is true for everyone here.



Mr. Turner: That is the point I was going to make. If it is any help to you, as far as I am concerned, we are all in daily association with each other. We are not all sharing rooms or whatever, but we do share all these facilities and we do meet formally and informally with each other. Frankly, on the surface I cannot see any problem with it.

Mr. Morin: As long as there is no doubt. If there is any doubt at all--

Mr. Turner: There is no doubt at all in my mind.

Mr. Martel: Just say you room with him and then everybody knows that. Everyone will understand there is no game playing. Once everyone knows, so what?

Mr. Chairman: That is the way I would call it. You have had the opportunity to put that statement on the record and you have done so. Unless you are involved in business transactions with him that might be involved in the allegations of a conflict of interest as a cabinet minister, we cannot see there would be any other conflict.

Mr. Martel: I think we should start to do it next week if we are going to do it without delay. We had better have a meeting as soon as possible next week to decide at least what we want to try to do or what we want to look at or examine. I am not sure there is a whole lot, but I have not given it much thought except to listen to what was going on in the Legislature. We should decide early in the game and try to clear it up as expeditiously as possible. I do not want to sit here all summer, if I can help it. The sooner we deal with it and get it going, then the sooner we get a conclusion. That would be my hope. The sooner we do it the better.

Even if we meet Monday and decide what we want to do and whom we want to talk to, or what we need for staff or if we do need staff, the sooner we do it the better it is.

Mr. Turner: I tend to agree with that. I would be prepared to meet next week some day or days to expedite those problems. Like my colleague, I think it is pretty clear-cut. I do not think there is too much to go into other than that what has been discussed.

4:20 p.m.

Mr. Martel: There are a couple of things that come to mind. One might want to ask why his adviser last January told him it does not matter if you resign from a board. One should ask somebody who is given that kind of advice. In the case of somebody who is given that kind of advice, you would not want to go back for a second kick at the can to get that kind of advice, whether it is from your accountant or not. I do not think it is as complex as the other one.

Mr. Mancini: When you are new to this type of business, sometimes you do not take it seriously some of the things you might and should take seriously. You might rely on other people's advice more than you should because you are busy being a new member or a new minister, busy trying to do a lot of things that should be done.

Mr. Turner: I do not think there is any doubt of that.

Mr. Bossy: The interpretation is another matter.

Mr. Mancini: The interpretation as my colleague Mr. Bossy says, is another problem. We may attempt this in several different ways. The motive of the committee is well intentioned. I think, as always, we will be able to do it together and try to come to a suitable conclusion.

Mr. Martel: I do not think we want to drag it out.

Mr. Turner: The sooner the better as far as I am concerned.

Mr. Chairman: Is it reasonable to proceed in this manner? We do have some practical problems such as Mr. Bossy pointed out. There are several members of the committee who are sitting on more than one committee over the adjournment. There is some juggling of timetables which has to be done.

The matter is such that it has been referred by the House for us to deal with without delay. My interpretation of that is that it would take precedence over virtually anything else. If you had double duty on another committee, it would be up to your whips to find substitutions for the other committee as this would take priority.

Mr. Bossy: Would the members be adverse to having a sitting in the afternoon and continue in the evening? I would sooner do that since we are here anyway to deal with the matter.

Mr. Chairman: We may have to do something like that. Can we attempt to set up a meeting for next week to make some decisions on when the hearing dates will be on this. That will give us a brief period of time to talk to House leaders and whips. If we are to proceed quickly, I need some motions from House leaders to allow us to sit more than one afternoon a week.

Mr. Mancini: I do not mind sitting on a Friday now that we have Fridays free.

Mr. Chairman: We cannot without a motion from the House sit on Fridays.

Mr. Mancini: No, but if we can construct a situation where we can start on Friday morning and work our way through the afternoon and the evening if it is necessary to get it all done.

Mr. Chairman: We need motions to do that.

Mr. Martel: Mr. Chairman, you may want to strike a steering committee of yourself and a member from each caucus to meet with research to decide what we want to lay before the committee in terms of whom we want to call and whom we want to bring forward and try to set up an agenda. We can try to throw ideas around here all afternoon, but until we have the issues laid out before us. Maybe research staff in the meantime could start to delineate some of the things we have to look at, some of the possible witnesses, and lay something before the committee as to the way we should proceed. If we have one member from each caucus and you as chairman, we can work it out that way, rather than throwing things around here without any material before us.

Mr. Chairman: Let me try this on for size. On this matter, would you volunteer one person from each caucus to sit as a subcommittee? We will report



back to the committee at next Wednesday's meeting. In my mind, so you can get an idea of the schedule that might take place over the next few months, the dates that I am aware of where it is possible for us to sit on this matter, once the House adjourns, are the third week in July, beginning again in the second week of August and from that point on until we are done.

Mr. Martel: Let us look at the timetable because there is something wrong.

Mr. Chairman: No, there is nothing wrong.

Mr. Martel: Wait a minute. I have a calendar in front of me too. Maybe somebody can give me a reason. If one looks at the dates, today is July 2 and next week ends on the 11th. When does the parliamentary conference start?

Mr. Chairman: The last week of July is the Commonwealth Parliamentary Association conference.

Mr. Martel: All right. Then we have the weeks of the 14th and the 21st.

Mr. Chairman: If the House is in session during those time periods, we have the constraint of requiring motions to be put.

Mr. Martel: The House will not be in session. Believe me, the zoo is going to collapse.

Mr. Chairman: Given those time constraints, if I have one from each caucus, we could have a session with research and perhaps come back next week and point out to you what all of this might entail. We then could make the decision whether we could proceed with hearings right away while the House is still here. In that case, we may be able to have an opportunity to deal with the matter in a week's time. If that is not possible, we are into this other timetable.

To complicate life further, the matter of the appointment of a new Clerk of the House is also on its way to this committee. That will require some time, I would take it during the month of August, because I think we would want to advertise as a first stage. About the second or third week in August, it may be possible to do some interviewing with the Speaker and get ready to make the recommendation to the assembly.

The other matter, which was announced today, which will also wend its way toward the committee is that John Black Aird will now hold an inquiry of sorts into conflict of interest in the broader sense. It is my understanding that he will not deal in any sense of the word with either of the two cases that are currently being discussed in the Legislature, but the intention is that Mr. Aird will table a report with the Premier (Mr. Peterson) and that too will be referred automatically to this committee and we will be expected to report to the Legislature in the fall session. We may have that matter dumped in our lap as well.

Mr. Martel: I can see our getting boxed in all summer if we do not get pretty ruthless about saying we are going to deal with some of this stuff, such as the matter of the Clerk or the Aird report, during the first week of September. Unless we get pretty dogmatic about it, we are going to find ourselves sitting here July and August. Let us put it into perspective. The House will not get out until next week probably.

Mr. Chairman: You are backtracking already.

Mr. Martel: No, no. I am talking about the 10th or the 11th, Thursday or Friday of next week.

Mr. Mancini: That is impossible.

Mr. Martel: I have seen all kinds of impossibilities in my few years here which have changed rather dramatically when the heat starts in August. You saw the House today, the tenor of the place. People are going to say, "Wait a minute." They are going to get out for a vacation some time. Look at the way we are starting to rope it up. Take your scenario. You are looking at the 18th. I think you are wrong; I think it will be the 10th or the 11th.-

Mr. Mancini: I have set aside all of July.

Mr. Martel: All right. So what?

Interjection.

Mr. Martel: We are not talking about that. I am talking about July already. The chairman has just spoken about the other two issues, the clerk and receiving the report from John Black Aird. Do you want the month of August blocked out? You already have a week taken out for a trip in August. You are going to have to put some of this up front and then be very hardheaded about the rest so that you get three weeks off, if you want three weeks.

Mr. Chairman: Can we strike the subcommittee now? Is that possible?

Mr. Turner: Sure.

Mr. Chairman: Can I get a volunteer from each caucus to do that?

Mr. Mancini, Mr. Sterling and Mr. Martel. These three, one from each caucus, and the chairman will attempt to meet later this week with Mr. Eichmanis and provide you with some parameters. Perhaps by this time next week, we will have a better concept of when the House might rise and what we might do.

I want to reinforce that, in my view, the Fontaine matter will be dealt with as a first priority by the committee. The second priority will be the appointment of the Clerk, which also has to be done. That means if there was a report from John Black Aird by the end of August, we might not be able to deal with it in September because we would be dealing with the freedom of information bill for a couple of weeks then.

Mr. Turner: Do you think his report is going to be available that quickly?

Mr. Chairman: The Premier's statement today said yes, there would be a report done by the end of August.

Mr. Turner: That is putting us into September.

Mr. Chairman: Yes, and I am trying to forewarn you that we may not deal with the report in September. It may be held over until the fall session.



Mr. Mancini: The standing committee on government agencies has already been approved to meet during the first three weeks in September. I am on that committee and I am not sure who else.

Mr. Chairman: There will be some substitution and there is nothing we can do to avoid that.

Mr. Mancini: For the important things, such as the Clerk and these other matters, we should have--

Mr. Chairman: We want to be able to deal with those during the month of August. That is our intent.

We can proceed from there. I have asked the government House leader to consider simply moving a motion which refers the matter of the appointment of the Clerk to the committee. There are two things he could do. The House could suddenly and wonderfully adopt the report that we tabled on this matter, but in the absence of that, it seems the usual way to proceed is simply to move a motion which refers the matter to the committee.

In our terms of reference, such matters are loosely included, but it is safer to have a direct referral motion put, which would clarify anything like that. We may want to begin having meetings with the Speaker, for example, concerning advertising and things like that, but our committee can handle that. Is there anything else members want to raise?

Mr. Martel: A couple of weeks ago someone mentioned that the assembly rules were coming to this committee.

Mr. Chairman: The assembly rules are part of the terms of reference of this committee; so they are here already. There have been two or three referrals of particular matters on the rules that have been brought to the committee by various members. Some time during the summer, if we get the chance, it seems logical that we will do an interim report on some adjustments that would be ready for the fall session. You may also have other matters you may want to raise.,

Mr. Martel: I think John Eichmanis should prepare tomorrow for our ad hoc committee a list of everything we theoretically have on our agenda.

Mr. Chairman: Whether he can do that tomorrow is a good question.

Mr. Bossy: I hope the ad hoc committee could come up with an agenda so that when we meet next week we can accept it.

Mr. Chairman: I am checking with the table officers to see what is the status of the the bill the Attorney General has before the Legislature. Something is happening, but we do not know what.

Mr. Turner: They are not sure either.

Mr. Chairman: I very much wanted to get through the remainder of the freedom of information bill today, but that looks less likely as we go along. What is your pleasure? Do you want to adjourn?

Agreed.

The committee adjourned at 4:34 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ORGANIZATION

WEDNESDAY, JULY 9, 1986





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

O'Connor, T. P. (Oakville PC) for Mr. J. M. Johnson

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, July 9, 1986

The committee met at 3:56 p.m. in room 230.

ORGANIZATION

Mr. Chairman: I see a quorum. For the purposes of proceeding this afternoon, the committee determined last week that the first order of priority is to handle the reference of the Fontaine matter from the assembly. A steering committee was appointed last week, and it did meet.

We will begin today's proceedings by going over the recommendations as they come out of the steering committee. I would suggest that a reasonable way to proceed from there is to then entertain anything else anybody wants and attempt to get that. Since the steering committee met, I have had a couple of things brought to my attention by various members that seem quite reasonable to me. I will introduce those at the end. The package of material has been distributed.

We now have the recommendations from the subcommittee that consists of Mr. Mancini, Mr. Martel, Mr. Sterling and myself, and Mr. Eichmanis. Smirle Forsyth attended the meeting as well. The recommendations are roughly as follows:

That the committee meet for the first hearings in the week of July 21 to 25, and we would attempt to set aside that period. It would be akin to a preliminary hearing. If it is possible for the committee to come to a conclusion at that time, that would give us five working days in which to hear the case and to go through our deliberations. It may be possible to conclude at that point. If it is not, we would then reconvene on the matter in the second week in August.

As we went through it, and subject to a little change afterwards, it was decided the schedule would be as such: On Monday, the first day, we would receive the material that we have asked the staff to gather, get a small briefing from staff and provide an occasion for members of the committee to ask questions on documents that have been tabled--process, procedure and things of that nature.

The next day Mr. Brandt, who made the allegations initially in the House, would be invited to appear in front of the committee and state his case. He would also be invited to table any documents that he cares to with the committee. Members would then have a full day of testimony and an opportunity to examine at length just exactly what the allegations are.

On the next day, Mr. Fontaine would be invited to appear before the committee to make his statement. Members again would have a full day of hearings in which to examine and to let him table anything that he wants to have us consider. By the end of the third day we would have had an opportunity to examine documents, have a statement of the allegations and Mr. Fontaine would have had an opportunity to respond.

4 p.m.:



On Thursday of that week, the committee would then be in a position to make an adjudication of whether it had heard sufficient evidence to make a decision. If it had, we would have Thursday and Friday of that week to write a report on the matter. If on Thursday of that week you decide that you need more information and want to call more witnesses, we have put together a first draft of those who might be suitable to be approached to come as witnesses before the committee. It is not meant to be all-inclusive, but it is meant to be the framework. We have suggested that this will be done initially by invitation. If a Speaker's warrant is necessary, we will seek a motion from the House to have that authority, but we will begin by inviting people to attend.

I will run down that list of people whom the steering committee felt would be appropriate, if you want further witnesses: Someone to attend to represent the Premier's office, perhaps the Premier (Mr. Peterson) himself, or more likely someone on his staff; the firm of Blake, Cassels and Graydon--Mr. Fontaine's legal advisers; Mr. Paul Martin who is the director of Golden Tiger Mining Exploration Company Inc.; the firm of Osler, Wills, Bickle--Mr. Fontaine's brokers; the firm of Midland Doherty--brokers of Mr. Fontaine's children; the firm of Jones Gable--Mr. Fontaine's brokers; and Mr. Blenus Wright who is the assistant deputy minister for the Attorney General, who may be of assistance to us on the guidelines themselves.

You may want to ask someone from the Quebec Securities Commission to attend, and we may determine that other witnesses would be appropriate. All we are trying to do here is to provide a framework.

If you decide on that Thursday that you will extend the hearings, we require some notice to witnesses because we are inviting them. We are suggesting a two-week interim during which we would line up people.

We have asked the staff to begin gathering up documentation: the guidelines on conflict of interest for ministers and parliamentary assistants; the disclosure statement filed by Mr. Fontaine in his statement to the Legislature; excerpts from Hansard and press reports; precedents with respect to this and similar matters; and a background paper covering a glossary of terms, for example, might be useful.

Some of that documentation is beginning to come forward now and some is on the way. We had a brief discussion before we began today, and it is generally felt that members would like to see all material gathered in one document and presented at one time rather than receive dribs and drabs. I put the caveat that if any member is interested in getting a particular document or even the whole thing in advance, we can do that. It is simply a matter of providing additional copies.

The steering committee recommends that we do not hire an outside legal counsel, that we ask the senior lawyer, Merike Madisso, to attend to the committee. We had some discussion there, and I am sure other members will want to elaborate. The problem we have with outside counsel is that we are running across several fields of expertise here. A corporate lawyer could advise us on the corporate side. Someone who is into criminal prosecutions could give us some advice in that regard. A parliamentary lawyer who could provide us with procedural type of advice would be difficult to get, other than table officers who are, of course, attached to the committee already.

We could have considered, for example, bringing somebody from the British Parliament of Westminster. There is plethora of lawyers hanging

around the Mother of Parliaments who are experts on procedural matters, conflict matters, guidelines and all of that. It was felt that would be difficult for us to do, unless we were prepared to hire a battery of legal advice.

We have provided in-house legal counsel for the committee, which is the suggestion. I want to put a rider on that. There may be occasions when we will need a more specific professional opinion, and that would mean we would ask for a professional opinion on a given matter from a law firm. Because of the possibilities herein, we would have to retain the option that at some point the committee may want to seek a legal opinion from an outside law firm, and that would still be considered.

Mr. Sterling: Do you want us to debate the issues as you go through?

Mr. Chairman: Maybe I could get through the list because I am pretty well through, and then we could go over the individual points.

Because of the nature of the matter, we are suggesting to you that witnesses before the committee be reminded that they are providing testimony as they would in a court. We should remind them by having them take the oath.

Anyone may be permitted to have counsel present. That is relatively in line with previous reports from this committee, but the witness's counsel will not be permitted to cross-examine. Authority will be sought from the House to issue the Speaker's warrants if they are required.

A couple of other matters have been brought to my attention since this meeting. I will raise them and then we can discuss these points. It has been brought to my attention in a quite reasonable request that there may be a need for simultaneous interpretation during the course of these hearings. I would certainly agree that is a reasonable thing; if the committee desires it, we can arrange that.

The other matter is that it might be useful, and this is a little debatable, to notify people of these hearings, particularly those you might consider calling in as witnesses in August, to provide them with a written notice that they are being considered as witnesses so they would have an opportunity to rearrange business and vacation schedules over the summer.

That poses a bit of a problem. If we notify them now that they may be called in August and they rearrange their whole vacation and business schedule for the summer and then they are not called, they may be a little upset. However, that is the best of the two evils. They may also be upset if they have arranged a vacation for the second week in August and you decide to call them. They would then have to cancel their vacation schedule on a two-day rather than on a two-week notice.

That is roughly the report of the steering committee on the matter.

I would like to proceed as informally as we can today since we may be getting very formal subsequently. Are there other matters that members want to raise now before we get into adopting or rejecting the report?

Mr. Sterling: Do you mean other matters other than procedure or is it anything that we wish to discuss?

Mr. Chairman: Yes, anything else you may want to raise.



Mr. Sterling: The other matter we did not discuss is that it might be useful to have simultaneous translation during these hearings.

Mr. Chairman: Yes, we mentioned that.

Mr. Sterling: I am sorry, I missed that.

Mr. O'Connor: I have one small matter although I have other matters to speak to. It is with regard to the authority to issue Speaker's warrants. We should cover the situation when the House is not sitting.

Mr. Chairman: That is the reason for the recommendation that we seek the authority for Speaker's warrants before the House adjourns because there would be some difficulty in getting them when the House is not in session.

Mr. O'Connor: Does that authority have to be specific as to the number and names?

Mr. Chairman: No.

Mr. O'Connor: So we should have authority within the committee.

Mr. Chairman: That is right.

Mr. Treleaven: Perhaps it would be helpful if, in seeking the House's authority we could simply refer to the recommendations of a past report of this committee and use that very wording, which dealt with the situation where we wanted a Speaker's warrant at committee when the House was not sitting. We could simply refer to that wording because we have already gone through it.

Mr. Chairman: Yes, that would be the idea.

Mr. Martel: I talked to members of the other committee that is looking at this. They informed me we might have a session with them--before you shake your head, Mr. Chairman. I know they have gone all over the ball park but I am saying that is the reason they are suggesting we might want to talk to them because they feel they have wandered afar and would be prepared to tell us how--I am not suggesting they want to tell us how to run our business. However, they may be able to outline where they feel they went overboard or missed the boat, in order to save us some anguish of going down some of the slippery slopes they went.

Mr. Chairman: I am sorry. I have certainly done that. I talked to several members on the standing committee on public accounts about the progress of their hearings. I have assumed, perhaps wrongly, that other members have done the same thing.

Mr. Mancini: I talked to some of those members.

Mr. Chairman: Is there anything else anybody wants to discuss this afternoon?

Mr. Treleaven: Yes, all the chocolate milk was taken by these fellows before I came in.

Mr. Chairman: I knew you would come up with a real, serious point. You can count on lawyers to really get to the heart of the matter.

On the steering committee's report: I will include in the report that we would use the simultaneous translation. We would also consider the matter of notice to possible witnesses in the way of a letter informing them that hearings are under way.

4:10 p.m.

Mr. Martel: Could we hold that up until after the meetings next week? I realize it only gives us two weeks but we might decide who we want to see. Rather than send out a mass mailing, we indicated that after the third day we thought we would decide who we might want to see in the future.

Mr. Chairman: That is right.

Mr. Martel: You are not suggesting that we have to put the letter out right away.

Mr. Chairman: No. On the main report of the steering committee, now including the recommendations of simultaneous translation and notice to witnesses, are there any comments?

Mr. Mancini: As the members know, the steering committee met last week. We spent about an hour together. In a very thoughtful way we came up with what is before the committee today.

I want to put a matter before the committee and I will take a moment or two to put it in perspective. The week of July 21 is the first working week after the end of next week. The following week, the week of July 28, the chairman of our committee and other members are tied up with the Canadian Commonwealth Parliamentary Association. That working week is not available to us to conduct hearings.

The week after that we are conducting business at the Conference of National Legislatures. As you can see, we do not have a lot of time, although when you look at the calendar there appear to be a lot of working days.

I believe we can complete our hearings in five working days. They may have to include a couple of night sittings, but I think it is possible to have it completed unless we get--I will use the word that my friend the member for Sudbury East (Mr. Martel) uses--into the same kind of swamp they got into.

I believe our researcher can have all the information prepared for us in package form near the end of next week. I would like to recommend that instead of using Monday, July 21, we use one day at the end of next week for our briefing. We come in, we spend a day with John Eichmanis, we go through the briefing material and then when we come back on Monday--I know there is some whispering behind me. We will then have five working days to complete the report. If the week of July 28 had not been unavailable to us because of the parliamentary association then I would not have considered putting this forward to the committee because we would have had two working weeks, and I assume that we could have done whatever we had to do in that time.

Because of the scheduling of the month, and the obligations we have, I think it would be appropriate for us to consider using one day towards the end of next week for our briefing. We could come in on Monday, get to work and hear who we have to hear, and near the end of next week we could start making some judgement calls.



I would be disappointed, as I am sure other members would because we have been asked to take on this duty by the House with dispatch--I cannot recall the exact word used.

Mr. Eichmanis: Without delay.

Mr. Mancini: "Without delay" are the exact words used by the House, as far as instructions to us go. It would appear that if we were able to use one day next week we would be moving without delay. If we leave everything until next week I am afraid that on Thursday or Friday we may say, "I wish we had another day, we would probably have been able to complete all this." The sad thing about that is we will have to come back about August 14 to complete a day or a half-day's work. That is unfair to Mr. Fontaine, and it would be unfair to ourselves as a committee because we have to build credibility as we go through this situation. We also have to follow, I believe, the guidelines that have been sent to us by the House.

That is the first thing I would like the committee to think about.

Mr. Chairman: Do you want us to try that on for size?

Mr. Mancini: Yes.

Mr. Chairman: Okay. How practical is it to suggest we set aside a day near the end of next week?

Mr. Treleaven: No, I am strongly opposed to that. I would like to stay with this.

Mr. Turner: Does it necessarily have to be towards the end of the week?

Mr. Chairman: Yes, to make it viable.

Mr. O'Connor: I have some concerns about that, too, from a personal point of view. I agree with the member in that we should be getting on with this as soon as possible but I must disagree with him when he indicates that he thinks we can complete our deliberations within a week.

I have had occasion to look at some of the documentation. I am aware of some of the things we will be delving into. I cannot conceive we will complete our deliberations within a week. If that is the case, we will be back here in August in any event, so I do not see how one day next week is going to assist us.

Mr. Chairman: We are looking at the concept of whether we could come in for a day at the end of next week for the briefing session and deal with that matter alone. From the steering committee's point of view, we are admitting that it is tough to juggle timetables. Some members will be here next week and it will not be a problem. It is certainly not a problem for me to come in for one day next week. The difficulty I have is that, to be successful, every member who is going to be a participant during the course of these hearings has to hear all the material that is in the briefing package. If it is not everybody, I suggest it is nobody.

The other matter I should have raised earlier is it the steering committee we had a fairly lengthy discussion about the simple fact that once we begin this process, I expect, and I think there was agreement on the

steering committee that we all expect, all members who anticipate being here for a vote on this matter to be here all day every day while this hearing is under way. It is not an occasion seen by any of us to be suitable to come in for an hour and wander off to another committee or another commitment.

We are saying you should clear the decks of other commitments. When we start in the morning we expect everyone to be here. We expect you to be here all day during the course of the hearings. The same thing holds true on the briefing day. It would not be useful to have half the committee briefed and the other half not able to attend. It is a bit unfair in a sense, but I do not think it would be helpful to brief half the committee one day next week and then have to go over it all again the following week.

Can we go around the table? Does anyone have any more comments on that?

Mr. Bossy: I still feel since we have to commit ourselves to being here for this committee and we are here at a distance, not like some who have the luxury of being back in their ridings at night, we should commit ourselves or the committee should agree that we should sit a minimum of two evenings, if necessary, in that week so we can accomplish the maximum possible.

Mr. Chairman: I put the caveat on this when I said to clear the decks. You are talking about a normal committee day from 10 in the morning to the latter part of the afternoon, 4:30 or 5 o'clock, whenever we conclude. If it means staying around for an extra hour, I hope you will be prepared to do that.

If it is apparent to us that coming back on Thursday evening, for example, to finish writing the report would resolve the matter, I hope you will all be prepared to cancel any outside engagements and do that. I am not saying we should gear up to sit in the evenings, but if it is apparent to the committee that we are near a decision and we could reach it by doing a couple of hours in the evening, you should be prepared to do that. I see heads nodding, and I take it that is not a problem.

Mr. Sterling: Or, for instance, when Mr. Fontaine comes down. It is going to mean an extra day and we think we are going to have an extra hour. He is coming a long way and he has other business to attend to.

Mr. Chairman: Yes. That is another instance where I think it is reasonable, if we are asking someone to attend this committee and he is coming from a long distance and busy with other matters at the moment, rather than holding him over until the next morning for another couple of hours so you can ask him questions or discuss the matter with him, if you are prepared to come back in the evening for an hour or so and do it then. Is that okay?

Mr. Turner: No problem.

Mr. Chairman: We have been around the table fairly well. Let me see a straw vote show of hands. How many think it is a good idea to come back next week for a day to get the briefing done before we start? Those opposed? My problem is I do not have the whole committee here.

Mr. Mancini: What was the count?

Mr. Chairman: The count was 4 to 2 and one not voting.

Mr. Mancini: What is the procedure on this?



4:20 p.m.

Mr. Chairman: The procedure is that a majority vote carries. The problem is the majority vote does not solve the problem. If it is a briefing session for the whole committee, having the majority of the committee here does not mean we will not have to go back over it the next Monday. If you want, we can proceed by majority vote. That is not a problem.

Mr. Mancini: It is not my intention to get into a long and heated debate with my colleagues, but I believe as a committee, and as the steering committee did last week, we made commitments. I made commitments last week on behalf of Mr. Bossy and Mr. Newman, and I am told we are going to have a substitute for Mr. Morin so that will be taken care of. We were going to be here when we needed to be here. I cannot, and neither can you, control the others, but we can give strong feelings on what the others should do.

In view of the serious nature of the situation we are going to be discussing, however, I think it is unfair to have a minority of the committee suggest to the majority that we should not come in next week to have our briefing. If it were a tied vote, I could be convinced it will not be worth while and we will end up in a swamp.

Mr. Chairman: I will put it to you this way. You had a straw vote and the indication I had is that four members could be here and two could not.

Mr. Turner: I think it was six to two.

Mr. Chairman: Let us try it again.

Mr. Martel: Before you take a vote, my concern is yours. I have no objection to coming down for a day, but I do not intend to come down if somebody is going to stay home. If we get a commitment that everybody is coming, that is one thing. You can have a majority vote and the majority will come, but you are still stuck on Monday if people did not show up, unless we decide we are not having a briefing on Monday.

We have gone through the cowboy thing more than once, as you know, where people miss something and want it all explained to them when they come in. I am not prepared to do it unless there is total agreement that everybody comes, and then have the cowboys come in later on and want it explained again. That is my concern.

Mr. Mancini: I understand from what the steering committee decided and what the chairman said today, the ground rules are that we will not be repeating anything for anybody. We are going to be moving forward on a rational basis and we are asking everybody to stay close to their seats. If someone feels he cannot come in next week, that one or that minority should not dictate to the majority that we cannot get the committee moving with some fairly important material we can hear next week. I want to ask my colleagues if it is impossible for them to come in next week.

Mr. Treleaven: Yes, it is unfair to ask me to come in next week. I have to be here the following week for the Canadian Parliamentary Association. No, I will not be here next Friday.

Mr. O'Connor: My difficulty is I cannot be here next week either. We were told we were going to sit on July 21, and on that basis, I committed to being on the committee. I was not expecting to be here next week and I cannot be here.

Mr. Chairman: You are making me get more formal. The formal recommendation comes from the steering committee, and it does lay out the timetable there. I was prepared to consider Mr. Mancini's suggestion as a friendly suggestion. If you want to get more formal about it, I will revert to the recommendations of the steering committee.

Mr. Mancini: Before we close, let me say this. We are dealing with a very important matter. We have been asked by the Legislature to move with some haste. What were the words that were used?

Mr. Chairman: Without delay.

Mr. Mancini: We have been asked to move without delay. I would love to be home all next week and spend time with my two daughters and do whatever we could do during the week and whatever constituency work and political work I could do, but we were asked to undertake this responsibility.

I know what Mr. Treleaven is talking about when he says he has to be at the CPA conference. He has to do this and he has to do that. That is understandable, but we are on this committee. We have been given a grave undertaking and we were asked to do it without delay. I do not think it is good enough to say to the committee that because the week after one has to be at the parliamentary association, one cannot dedicate one day of the previous week to start to undertake our hearings.

Mr. O'Connor is busy too, doing what I do not know. I am busy too. Mr. Martel is busy, and he has to come in from Sudbury. My friend the member for Chatham-Kent (Mr. Bossy) makes the valuable point that it is much more difficult for us who have to stay overnight. I could understand if I were suggesting we start without the material being prepared or we start a two- or three-day session and screw up everybody's week, but when the suggestion is that we come in for one day, either Thursday or Friday, to me it is not good enough just to say, "I am busy." We are all busy.

Mr. Treleaven: I have two comments. First, the subcommittee did meet and did say we would start with the week of July 21 to July 25. Mr. Mancini was on that subcommittee. If he had ideas of starting on the Friday, he could have made a dissenting report or something to this.

Mr. Chairman: Let me interject there. To be fair, he did raise the matter at the steering committee meeting. At that time, it was generally held that it would be difficult to bring people back in and that we would clear the week of July 21 to July 25. That was the majority feeling of the steering committee. I allowed him to bring it up today because I want to be reasonable about this.

Mr. Mancini: Can I say something else to add to what you said? When I brought it up at the steering committee meeting, it was said: "My goodness, we are going to be in session. Everybody is on two or three committees. We are going to be running back and forth." No one thought at the time we would be out of session. The reasons are even stronger now than at the time I brought it up.

Mr. Treleaven: My second point is that I want to save the committee, and therefore the taxpayers, many dollars by suggesting that instead of coming in for Friday and having all those long miles from Sudbury down to Toronto and back for Friday night, we have the extra day on Sunday. That way--



Mr. Martel: Put it in your ear.

Mr. Chairman: Can we have some sense in the conversation?

Mr. Treleaven: That is a straight roll. It does not mean people coming for Friday, then going back to whatever they are doing and coming back again. I am always in favour of saving the taxpayers' money and, therefore, I will be making an amendment that it be Sunday instead of Friday.

Mr. Chairman: I have allowed some latitude in the discussion here. We are going to have to get to the decision.

Mr. Sterling: I will not be as long as the previous members. Mr. Turner and I can be here on Thursday, but neither Mr. O'Connor nor Mr. Treleaven can be here on Thursday. They have both indicated to me they will look at the material presented, etc., and they think they can catch up, if that is acceptable to the committee.

Mr. Chairman: I cannot tell you right now who will be the other member from our caucus on the committee. I simply reiterate the concerns I expressed to the steering committee. I do not think this is a matter that can be done in isolation. It is something we will do as a complete group from start to finish. I am a fervent believer that is required. Motions can carry in here and there is nothing I can do about it, but it will start us off on the wrong foot if we cannot all attend the briefing session and get the same information at the same time and share in that discussion from start to finish. Unfortunately, we will begin in the wrong way.

I will now put the recommendation of the steering committee, which is that we meet the week of July 21 to July 25, that Monday is the day when the committee will receive all the background information, Tuesday is the day when Mr. Brandt appears, Wednesday is the day when Mr. Fontaine appears, Thursday and Friday are days when we can either conclude the report or schedule the agenda for August hearings. That is the motion.

4:30 p.m.

Mr. Mancini: It is unfortunate that we have to get to this point. From what I have heard, and with great respect to Mr. Treleaven, I do not think we have heard a valid reason why we cannot meet next week. I know everybody wants time with their families. I know he represents a big rural constituency that carries a lot of obligations. I know he has been under pressure as Deputy Speaker with the pressures that job entails. I know other members may have obligations back home, but we have been given this duty by the House and we have been asked to do it with appropriate speed. I am sorry we have not heard good reasons why we cannot do it.

Mr. Chairman: Any other speakers on the motion?

Mr. Sterling: The answer may lie with what Mr. Brandt will do in front of this committee. His penchant is not to have a very lengthy statement, if anything, and he would prefer to come here as a member or a substitute member of this committee at the time he is presenting it and not as a witness.

In terms of Ms. Caplan, there was no requirement of Mr. Gillies, or anybody else who made any allegations, to present himself as a witness in front of the committee. There are other members of the House who have made allegations about Mr. Fontaine, including the member for Cochrane South (Mr.

Pope), the member for York South (Mr. Rae) and the member for Etobicoke (Mr. Philip). You could call all these gentlemen as well.

Mr. Chairman: You may.

Mr. Sterling: My information is that Mr. Brandt will bring with him documentation. He will table it and his statement may last all of five or ten minutes.

Mr. Chairman: That is fine.

Mr. Martel: He might be questioned.

Mr. Chairman: The reason Mr. Brandt was asked to attend the committee is that he is the first member who initiated any discussion of the issue. While there have been questions from a number of members, he was the member who initiated it. I spoke briefly with him and asked if it would be acceptable for him to appear at the committee. To my knowledge, he has agreed to do that.

I would prefer that he did not appear as a substitute member of the committee. That would pose a rather awkward situation and also bump one member from your caucus. My preference is that we stick with the steering committee recommendation that he appear as a witness. He is a member of the assembly and we will not deny that to him at all, but I prefer, since he did initiate the discussion on the matter, that he appear as a witness and present documents. He can make a brief or lengthy statement or whatever.

Mr. Sterling: I do not think it is going to take a whole day to deal with Mr. Brandt.

Mr. Chairman: That is fine.

Mr. Sterling: Therefore, the concern of Mr. Mancini may be answered with regard to having an extra day there, or most of a day.

Mr. Chairman: That is quite possible.

Mr. Mancini: To answer Mr. Sterling, I suggested that it could be done in a week and Mr. O'Connor thought it could not be done in a week.

Mr. Chairman: The truth is that none of know whether this is going to be four or five days or five weeks.

Mr. Sterling: That is not the argument I am putting forward. We are talking about getting an extra day. I am talking about the fact that I do not think Mr. Brandt is going to need a day.

Mr. Chairman: Are we ready to vote on the recommendations contained on the first page, that is items 1 to 5? Item 6 is the matter of us considering other witnesses, if that is possible.

Those in favour of those recommendations from the steering committee? Any opposed to those recommendations? Carried.

Mr. O'Connor: Just a minute. We have to get the status of Mr. Brandt settled. There is part of that page where we are dealing with him.



Mr. Chairman: I am prepared to deal with that now, but I want to clarify--

Mr. O'Connor: Why do we not vote up to item 3?

Mr. Sterling: Why not say we will start next Monday? Is that the motion?

Mr. Chairman: No, the recommendation is that the committee meet the week of July 21 to July 25, that this week be a preliminary week and that, if required, the committee reconvene on the matter in the second week of August. On Monday, July 21, 1986, the committee will receive all background information on the matter and discuss the same with staff.

Mr. Treleaven: Stop. We will vote on that.

Mr. Chairman: You want me to stop there. Okay. Those are items 1 to 3.

Mr. Newman: Wait until Remo comes in.

Mr. Chairman: This is my problem--

Mr. O'Connor: When he leaves, it is his problem.

Mr. Treleaven: This is the only committee in captivity that does not hardball its votes normally. It consensusizes its votes.

Mr. Turner: It what?

Mr. Treleaven: Consensusizes. That is an Oxford expression usually.

Mr. Chairman: We are ready to vote on items 1 to 3 of the steering committee report. Those in favour of items 1 to 3? Any opposed? Carried.

Now we will move to item 4. I take it you want to broaden it somewhat. The clear implication here is that Mr. Brandt will be invited to appear before the committee on Tuesday, July 22. Under this recommendation, he will be appearing in a technical sense as a member who has been asked to attend as a witness at a committee.

I heard the comment that he would be substituted on the committee. That would make it just a touch awkward for me as chairman, since I would have to face the question of whether he is appearing as a witness or whether he is a participant in the committee. It clarifies the matter and helps the chair if he appears as a witness rather than as a substitute member of the committee. I am making a plea here. I do not think it makes a great deal of difference except for the person in the chair, who may be faced with whether he is a participant or presenting his documents or whatever.

Mr. Treleaven: If he was a witness only and not a member of the committee, he would still retain all his rights as an MPP to question?

Mr. Chairman: Yes.

Mr. Treleaven: He could only be restricted from making motions and voting. Is that correct?

Mr. Chairman: That would be the essential difference.

Mr. Sterling: What does legal counsel say about that? Is he speaking then as a member of the Legislature?

Mr. Chairman: There is nothing we can do that will reduce his stature as a member of the Legislature in any way. We have done an extensive committee report on witnesses and that was our finding. No matter what might happen, he is a member of the assembly with all rights and privileges. If he was not substituted on the committee, his status would be that of a witness before the committee. The prime difference is that in that situation he would not be moving motions nor voting.

Mr. Sterling: What has Mr. Brandt said to you?

Mr. Chairman: I invited him to appear before the committee and state the case and he said he would be happy to do that.

Mr. Sterling: Did he say he would be a witness?

Mr. Turner: Did he state he had any preference?

Mr. Chairman: I suggested that he would be called as a witness and he did not seem to have an objection to that.

Mr. Martel: I agree with the chairman except I suspect we have no control over what he appears as. If he decides to substitute, I do not know of any rule that would prevent him from doing that.

Mr. Chairman: Frankly, it would be awkward if he did that.

Mr. Bossy: It does not matter.

Mr. Chairman: It is not going to cause any great problem. It is going to cause some awkwardness for the chair; that is all.

Item 4 is that Mr. Brandt be invited to present the case on Tuesday, July 22. Those in favour of that recommendation? Any opposed? Carried.

Item 5 is that Mr. Fontaine be given the opportunity to present his case on Wednesday, July 23. Those in favour of that recommendation? Any opposed? Carried.

Item 6 is that on Thursday, July 24, the committee will consider whether it shall proceed further with the inquiry. If we do, at that time we will have to identify who will be invited to appear before the committee. Any problem with that? Shall item 6 carry? Carried.

Item 7 is that the next set of hearings on the matter will be in the second week of August. Any problem with that? Carried.

4:40 p.m.

Item 8: Are there any other documents you know of that you would like to have? Those are the ones the steering committee could think of. I make this proposal to you. If you think of a relevant document that will not cause raving qualms of controversy, you can simply ask John Eichmanis if he can get a copy of it and we will be happy to try to get that information. So far, we



have not encountered any difficulty in getting documents, but there will be other opportunities. The point I want to make is this is not the end of documentation; it is just the beginning list we could think of.

Mr. Sterling: I indicated in the steering committee hearing and John told me that he was going to get some information about all the matters relating to forest management agreements.

Mr. Chairman: Yes. We have those. Shall item 8 carry? Carried. Item 9?

Mr. O'Connor: I have some concerns about that recommendation. I would have thought--I am new to the committee--given the nature of these proceedings, that it would almost be taken for granted that objective, outside counsel should be hired. You shake your head, but may I make my case?

Mr. Chairman: Oh, yes.

Mr. O'Connor: As we know, in another committee next door proceeding on a similar matter, outside counsel is involved and he is presenting the case of the evidence to be heard by the committee. Given the nature of these proceedings, it is fair to say it is tantamount to a trial proceeding. The actions and activities of a member of our Legislature, not only a member of the Legislature but of the executive council, are under close scrutiny. A lot depends and hinges on the outcome of it, not only from his point of view but as far as the activities of all the members of the House are concerned.

I would have thought that, given that there is an accuser in the nature of Mr. Brandt, who, we have now decided, will be given a day to make his case, there would be an opportunity for the accused to reply in kind. There is an absolute necessity to conduct our proceedings in a judicial and fair manner.

I note in items 10, 11 and 12 that there seems to have been an attempt by the subcommittee to adhere to fair procedures and to adhere to the general procedures present in a courtroom, allowing counsel to be present and witnesses to be cross-examined by members of the committee. Given those circumstances, the hiring of an outside, objective counsel who would marshal the evidence and simply present it on a daily basis, which could then be examined or questioned by the members of the committee, would be the most orderly way in which to proceed.

The difficulty I have, without casting any aspersions whatever on legislative research counsel, Ms. Madisso, is that she and that service is a service of the members of this House, which reports to us and performs duties on our behalf. It may be somewhat compromising for someone from that staff to be in the position of providing evidence and information and preparing documents and presenting them to the committee about a member to whom he or she may have provided services in the past. From their point of view, they might find that role difficult.

Mr. Chairman: They do.

Mr. O'Connor: The best and fairest way to do it is to go outside to obtain absolutely independent, above-reproach counsel, who will in a very objective way assist us and guide us through these proceedings. Previously, Mr. Chairman, you referred to the difficulty in obtaining the right person, but someone who may not have the broad background necessary in corporate law and litigation and so forth. I do not see that as a necessity.

We need someone who is familiar with the procedures of a courtroom, the presentation in a fair manner of evidence that is not hearsay and the presentation of evidence through documentation; someone with a general litigation background, not someone who necessarily has an intense corporate background or background in the rules of procedure of parliaments around the world. That is tantamount to a counsel perhaps to a royal commission or an investigative body, which is not a court, as we are not. For all of those reasons, it would be much the wiser thing and perhaps much the more expeditious thing in proceeding without delay but as quickly as possible through this. Surely someone of that capability, organizing the material and presenting it to us in a logical fashion, would assist in our deliberations.

Mr.-Chairman: Let me give you a little background on this. The last five recommendations from the steering committee are a combination of the experiences of this committee, which has hired outside counsel on a previous occasion, and recommendations that have been tabled in reports by this committee on how proceedings such as this should be carried out.

It has been our unfortunate experience that outside legal counsel enter into a very strange forum for them. They are not parliamentarians nor are they familiar with the workings of the Legislature. It is not a court in the traditional sense. In one sense, it is the highest court in the province, but it does not function like a criminal or corporation court. This committee has written reports and made recommendations that in a matter of this kind it is the members of this committee, not an outside counsel, who should lead the proceedings.

Frankly, it has been our experience that bringing in someone from the outside to lead the questioning and organize the material means that someone who will not vote on the matter, who has no experience as a parliamentarian and no concept of parliamentary procedures, will organize how we do our work. In previous reports, we have rejected that concept. We have had experience with it and we have rejected it.

Second, you will notice that in going down the list of things, we have not asked for counsel from the legislative library research services. We do not see that role. I have had some discussions with their staff and tried to make clear to them that we are not asking them to come here and cross-examine anybody, but we do want them present to provide the committee with legal advice from time to time, to assist us in identifying process, documents and things of that nature.

As well, I want it on the record today that I do not anticipate any member of this committee will turn to counsel, who is advising us in a general way, and during the course of the proceedings put direct questions to him. If you do that, I will rule that out of order. If you want to use counsel for advice, that is why they are there. If the committee wants to direct them to do research on legal matters, that is why they are there. If you want to ask them to get a proper legal opinion from a qualified expert in the field on a specific point of law, they will do that.

To proceed down the rest of the list, we have tried to clarify the role of counsel and the role of witnesses and their right to have legislative counsel with them in these proceedings. We have stated in previous reports that we believe they do, but that they do not have the right to cross-examine other witnesses or other members of the committee. We are not denying anyone the right to have a lawyer present to advise him on how to say things, what to say and all of that, but the lawyer's role is to advise the witness before the committee and that is the extent of the lawyer's role.



In previous hearings of this nature, we have had a bit of a kerfuffle with counsel who came in thinking they were in a criminal court wanting to cross-examine. On previous occasions, the chairman has ruled--and he will again--that is not the role of a lawyer in front of this committee. The lawyer is here to protect the witness, to advise and counsel him and assist him in presenting documents, to do anything he wants but not to be a participant in these proceedings.

These are the proceedings of a legislative committee. The only people who have a right to be active participants in questioning, cross-examining, making judgements and writing the report are members of the Legislative Assembly of Ontario. It is a court of your peers and only your peers will have jurisdiction in that court. That has been our finding consistently over the years. That is the background for it.

Mr. O'Connor: I understand all of what you said, but the in light of the potential implications, particularly to Mr. Fontaine, I would have thought he would have wanted this proceeding to be as judicial, fair and above-board as possible.

Mr. Mancini: And speedy.

Mr. O'Connor: Speedy, of course, absolutely. In his interest, he might well want the matter to be conducted by an objective, outside counsel who will introduce evidence that is relevant, who will marshal it in a manner that follows logically in time frame and will therefore speed up the proceedings, which Mr. Mancini seems to want.

4:50 p.m.

Mr. Chairman: Yes, he may well want that and at some time he may well get that. That will occur when someone lays a criminal charge against him, in which case he will go through the normal court procedures and all of those rules of operation will apply. In this forum, what is before us is not a criminal charge. Before us is a matter of whether or not a member behaved properly. He will be judged by his peers on that matter and that matter alone.

Mr. O'Connor: Do not misunderstand me. Of course, we are the judges of his actions. All we are asking and all I am suggesting is the assistance of someone to guide us through the mass of evidence we are about to receive, to do it in a logical fashion. You talk in terms of lawyers not being permitted to cross-examine; you mean the lawyers to the witnesses. Of course, they cannot cross-examine the witnesses because the witnesses are their own witnesses and they are there to protect their own witnesses and they ought to have that opportunity.

Mr. Chairman: Or other witnesses.

Mr. O'Connor: That is fair enough and it is a rule of this proceeding. Knowing something of the volume of evidence we are about to receive and the complicated nature of it, I think we need the assistance of someone to organize that and present it to us in a logical fashion from up here, from the point of view of a lawyer in allowing us to listen as judges in the normal fashion of a court. Although it is not a court, as you pointed out, the potential consequences to Mr. Fontaine are perhaps much more serious than if a criminal charge is laid. It could well result in the destruction of his political career. For that purpose, I think it is necessary for his sake and we should seriously consider that.

Mr. Chairman: We did consider it, and the committee is free to order its own business, but in our reports to the Legislature on this matter and on other matters, we have at least been consistent. We are recognizing two or three things. First, one of the major concerns will be a matter that no lawyer operating in the criminal courts or in the field of corporation law or any other field of litigation in Ontario is likely to know anything about, and that is parliamentary precedents. Frankly, that was our experience on a previous occasion when we brought in outside counsel to advise us on a matter. They did not know the forum.

Mr. O'Connor: They do not have to know it.

Mr. Chairman: Yes, they do.

Mr. O'Connor: It is up to us to know it. All they have to know is how to introduce evidence and lead a witness through a logical discussion.

Mr. Chairman: No. You misunderstand the proceeding. A lot of what our judgement will be based on will be parliamentary precedents, standing orders, what is or was proper parliamentary procedure for a member to follow. It has nothing to do with the procedures that are used in a court. It is a totally alien field to most practising lawyers.

Another matter that will be of some concern to us, and I predict we will have some difficulty with this, is that this committee will have to make some distinctions about what is reasonably and properly before the committee. I am going to remind members now, and I probably will a few thousand times on the way through this, we are not hearing an allegation of criminal wrong-doing, and we will not. We are not hearing an allegation of corporate wrong-doing, and we will not. We are not hearing whether someone did his business dealings in a legal way, and we will not. We will hear only about whether a member behaved properly in a parliamentary sense in this Legislature. That is what we have been charged with and that is the only thing we can deal with.

Mr. Turner: With regard to our mandate.

Mr. Chairman: That is right. That is what is in front of us.

Mr. O'Connor: If I can add to that, in the course of coming to a conclusion on that very narrow point that you have raised and which is set out in our mandate, we may well have to examine his corporate dealings and we may well have to examine his conduct and his activities in regard to the companies in which he allegedly was a director or held shares.

Mr. Chairman: I will give you this much. We will be considering how much of that is appropriately before this committee and how much of it is within our jurisdiction, and I will be cautioning you regularly. This is not a court where we are deciding whether a corporation acted properly. This is a court, in the very old sense of the word, about whether a member acted properly.

Mr. O'Connor: Unless that member is the corporation, is the sole guiding force, officer, director and shareholder of the corporation.

Mr. Chairman: We are getting started on it already. The corporation is not in front of us; only a member is.

Mr. O'Connor: Does it not point out the necessity for a counsel to guide us through that kind of thing?



Mr. Chairman: No.

Mr. Mancini: On a point of order, Mr. Chairman: I think we are now off the subject of whether we need counsel. We are now talking about who is going to be appearing before us, the corporation or Mr. Fontaine. I would like us to move back to the topic.

Mr. Chairman: Let me go around the table. I have some other speakers.

Mr. Sterling: I would like to support my colleague in expressing some concern about the need for outside legal counsel. My concern became even greater when you started to put restrictions on my activity as a member of the committee in what I could ask legislative library counsel--if I can refer to him that way; I am sorry--during committee hearings. I think the value of a counsel is that when a witness makes a reply I can turn to counsel and say, "How does this relate?" and proceed on. I want that. That is the value of a counsel to me. I will probably draw my own conclusions regarding conflict of interest, the guidelines, all the rest of that kind of situation, and I am sure Mr. Eichmanis can provide us with the research background into those areas, as could anyone else who can get that kind of information.

The other thing is that I see our function as a committee to find out what the facts are. What are the facts in relation to Mr. Fontaine, his involvement with Golden Tiger, with other organizations and other matters that may conflict with his duties as a Minister of Northern Development and Mines. It is my job to find the facts from him or from other people. That is what a litigation lawyer does day after day. He organizes his questions, whether he is dealing on day one with a matter relating to a building, a contract or a matter relating to the Ontario Highway Transport Board or whatever matter. He is trained to ask questions and his life revolves around eliciting facts from a witness. If he is acting for a committee, he will probably do it in a more fair and just manner than any member of the committee might, as far as leading the witness along. I am not speaking for myself.

Mr. Chairman: Leading the witness along? You are suggesting that a lawyer engaged in daily litigation gets away with leading witnesses along?

Mr. O'Connor: Exactly, Mr. Chairman, if I may say, that is exactly what a lawyer does.

Mr. Chairman: I am not a judge but I would not let you get away with that.

Mr. O'Connor: He leads the evidence through his witness. You are displaying your lack of legal knowledge by saying that.

Mr. Chairman: I certainly am, but I am displaying my abundance of parliamentary knowledge and you will yield to that display.

Mr. O'Connor: May I say we have to have the evidence led in a proper fashion.

Mr. Chairman: No. I reject totally that this committee will get evidence led before it. We will have evidence placed in front of us and we will adjudicate whether it is fair and reasonable. That is our task.

Mr. Sterling: My preference would be to have some path that counsel would lead in an objective manner to try to elicit basic facts from each

witness, facts that are relevant to our hearings. If anyone wanted to ask questions after that, for whatever reasons, they could do so.

Mr. Chairman: That is the heart of the matter, whether a legislative committee is prepared to yield its responsibilities to a counsel and say to a counsel, "It is your job to elicit the facts from a witness." Our committee has reported consistently on this matter that we believe it is not proper for a legislative committee to yield its responsibilities to an outside source. It is the job of this committee to do that. However faulty we might be, that is our job. It is not a job we hire out to someone else.

In a normal court of law, that is why you hire a lawyer--you want someone to do that--but in this particular jurisdiction, in the course of this kind of hearing, it is the role of the committee to do that. It is not the role of an outside lawyer.

5 p.m.

Mr. Martel: Let me say something because I am not sure what people are saying to me. I thought Mr. O'Connor started off by saying we did not need someone to lead us, we needed someone to prepare the material. Then I hear Mr. Sterling say that we need someone to lead the questioning. That is not the same thing. They both said different things.

Mr. Chairman: They are probably both wrong.

Mr. Sterling: I do not think so.

Mr. Martel: Sure you have. Mr. O'Connor said he wanted somebody to prepare it for us, but Norm is saying he wants someone to lead the questioning for us.

Mr. Mancini: Mr. O'Connor said that also.

Mr. Martel: Maybe I missed Mr. O'Connor saying it.

Mr. O'Connor: Maybe I can explain. I am sorry I did not make myself clear in that. As I foresee the role of a counsel, it would be to prepare in logical fashion the evidence that is to be presented to the committee and then through the witnesses present that evidence to the committee. The chairman objects to the term "lead," and perhaps quite rightly so, but present it through a witness, following which we would have the opportunity to question the witness on what he or she has said.

Mr. Martel: What you are saying is the same thing that Sterling is saying.

Mr. O'Connor: Yes.

Mr. Martel: You want a lawyer to do the questioning to start off.

Mr. O'Connor: As I indicated, that is the preferable way to do it.

Mr. Martel: I sat on only a couple of occasions where we had lawyers. Quite frankly, I remember the Inco inquiry quite well. We had a great counsel--he used to be a member of this Legislature--leading the questioning. It almost blew my mind because he did not even ask the questions that I as a layperson knew were relevant to the whole situation, and I could never find out why.



Mr. O'Connor: You would have the opportunity, following the questioning, by questioning witnesses yourself.

Mr. Martel: Oh, we did. He was the high-priced Pooh-Bah in the whole thing and not me.

Mr. Chairman: It seems to me we have heard a fair amount of argument. Are there other members who want to get in on this?

Mr. Turner: I would like to raise the question for you and the committee to consider, do we need any kind of outside counsel, if you will, or separate counsel for the protection of the committee?

Mr. Chairman: Not for the protection of the committee, but I would say this and put it on the record today, and you can take it for what it is worth. I want to acknowledge that there may be areas of law where we would want an expert opinion on a particular matter. I would want the committee to be aware that unless we are prepared to hire a battery of six people in a multitude of fields, we do not have another way to proceed.

What I am suggesting to you is that if we get to a specific point in law where we require an expert opinion, we will be saying to you that we are going to have to go outside to get an expert opinion on this particular matter. It will be a written legal opinion that will be presented to the committee. I would want that option kept open. I do not know whether we will exercise it or not, but it certainly appears to me that there may be occasions when we would want to do that and we would not want to stop that option now.

Mr. Turner: That was the point I wanted to address.

Mr. Sterling: Along those same lines, my greatest experience--I would not call it a great experience--was during the Remor/Astra Trust hearings when we had many witnesses in front of us. We went on for a month and a half. During that period, my greatest concern was the allegations that were made and I thought unfair treatment of witnesses during those hearings.

I guess that is another reason I would like somebody sitting up at the front and advising you, Mr. Chairman, as to whether or not a committee member is being fair in how he is approaching it or whether he is going over a danger point. There were many members who did go over the danger point in those Astra/Remor hearings. There were allegations made. There was no chance to rebut on the part of the witnesses.

We say in here that a witness's counsel cannot be permitted to cross-examine other witnesses. I agree you cannot allow that because it makes the process too unwieldy. On the other hand, it puts one witness who has appeared before another in a very disadvantageous position if an allegation is made later in the process where something reflects on that particular witness. It happened time after time in those Remor/Astra hearings.

Mr. Chairman: I agree.

Mr. Sterling: As a lawyer, it is a frightening experience to listen to the allegations. At that time, we were heading into an election period, as you will remember. People did not care about what they were doing, in my estimation, and forgot about a lot of the rules of natural justice in how they were carrying out the process. That is why I think we need a good lawyer.

Mr. Chairman: Okay. I hear you and I share some of your concerns. I am going to tell you now that you will hear me objecting a lot--I hope not a lot, frankly. I think this is a fair and reasonable group of people, peers of Mr. Fontaine formerly and of Mr. Brandt now. Whenever I think you are unfair to a witness, I am going to remind you now that one of the witnesses we have asked to appear is no longer a member of the assembly and does not have all of the opportunities and privileges that a member has. As well, I am going to remind you that while he is a witness before the committee, he does have privilege. I am going to remind each of you, regularly I suppose but I hope not unfairly, of what we are hearing in this set of hearings.

I do not think I will be unkind or unfair. I think we have a fair amount of experience. After all, we did have the president of the Canadian Imperial Bank of Commerce before us and we managed to make it through that set of hearings without any great animosity and without anybody saying anything really untoward. I will just remind you when I think you are off the track and I will ask you to get back on the track. If you do not, there is a gavel here that I will throw at your head and you will generally go off in that direction.

Mr. Turner: Duck.

Mr. Chairman: I hear what you are saying and I appreciate that I have not been a stand-up admirer of some of the proceedings I have seen around here, but I also have some faith that this committee has a reasonable amount of experience in matters such as this. I am anticipating that no one is going to come in here and take advantage of his position as a member of the committee and do something that would be unfair towards a witness. I view it as my job not to protect the witnesses, but to see that the hearings are kept on track.

Do we need more discussion about this?

Mr. Martel: There is great concern about preparing the material in a proper form ahead of time.

Mr. Mancini: It is mostly here.

Mr. Chairman: So far.

Mr. Martel: May I ask my question?

Mr. Chairman: Go ahead.

Mr. Martel: I want to know who is going to do that for us as we go along. Is it John Eichmanis? Okay.

I agree we cannot be all over the ball park. That was one of my concerns right from the beginning because I did not want to be running around in a half a dozen different alleys. As we said last week, we do not want people on a fishing expedition because we will have someone before us whose whole political career, as you say, is still there. If people are on little witchhunts or down avenues that have nothing to do with the issue, we have to make sure we are going to stick to the issue--that is my concern--and only the issue and that we are not going on a fishing expedition just to see if we might come up with something. To me, that would be a disaster to play that kind of game.

Mr. Chairman: Are we ready for the question on items 9 through 13? Is it reasonable to proceed?



Mr. Sterling: Item 9.

Mr. Chairman: You want to do item 9 by itself? On item 9, those in favour of the steering committee's recommendation on item 9? Those opposed? The motion carries.

On items 10, 11, 12 and 13, those in favour? Any opposed? It carries.

On the matter of providing simultaneous interpretation? Agreed.

We will begin on the first week. We do not need that until the Tuesday, which would be the first occasion. We may not even need it until the Wednesday, but we will have it available on Tuesday and Wednesday of the first week and we will print a Hansard of this.

Mr. Martel: Why do we need it? Oh, I suppose to have it written up in French?

Mr. Chairman: Yes. We will print a Hansard on that. Are there any other matters that we need to consider before we proceed to anything else? Okay. we are in business.

That covers as much as I have. We will prepare the notices for possible witnesses, but we will not mail those until the committee has determined that it actually wants to call them. Agreed.

Is there anything else the committee needs to consider on this matter?

We stand adjourned then. If the committee could stay behind for just a minute, I will run over a couple of other matters, dealing with the committee's agenda, for which we do not need a Hansard.

The committee continued in camera at 5:11 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

MONDAY, JULY 21, 1986

Morning Sitting





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatnam-Kent L)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Laughren, F. (Nickel Belt NDP)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Brandt, A. S. (Sarnia PC) for Mr. Johnson

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Turner

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, July 21, 1986

The committee met at 10:10 a.m. in committee room 1.

CLERK OF THE LEGISLATIVE ASSEMBLY

Mr. Chairman: Before we start the proceedings on the Fontaine matter, I am going to ask the clerk of the committee to distribute a proposed advertisement for the position of Clerk of the Legislative Assembly. I will go over this as quickly as I can with you. You are now getting a draft of the advertisement that will be placed. There were a couple of details that had to be checked. One was the salary range and the other was the terms under which employment would be offered. The Board of Internal Economy met and established a salary range, which is as you see it.

Mr. Martel: Just like members--

Mr. Chairman: Please do not drool. There are two changes from the current structure.

Mr. Martel: I will have my application in in an hour.

Mr. Chairman: One is that there would an order in council placed this time which would have the appointment reviewed every five years. That is an alteration. The second alteration is that there will now be a recommended salary range at the senior administrator level from \$69,500 to \$79,200. Those two matters are basically matters that are decided by the board and they were decided last week.

Our jurisdiction is to place the advertisement and receive the applications. The proposal is that we would use staff of the assembly to assist the Speaker and me to sort through the written applications. We will try to prepare for the committee a short list which will be presented to you in the latter part of August, and the committee will do the actual interviewing, probably now scheduled for the first week of September.

That is the process I have had outlined to me. If there are any questions or arguments about it, I would be pleased to hear them now; otherwise, it would proceed on that basis.

Mr. Mancini: What we are doing here with regard to advertising for the Clerk is acceptable. My only comment is under the title "Distribution" where it states that we are going to use the major papers, the major paper of each provincial capital? Is that correct?

Mr. Chairman: Yes.

Mr. Mancini: Does that mean there will not be an advertisement in the other urban centres in the provinces?

Mr. Chairman: It will not be a national advertising campaign, but it will be printed in the national edition of the Globe and Mail; so



theoretically, it will have cross-Canada circulation. It will be printed in the major daily newspaper in each capital city. It is reasonably well known now, but there are a couple of other ways in which, through clerks' associations and parliamentary associations, we can get some distribution. However, it is a rather massive task and an expensive one to try to go much further than that.

Mr. Mancini: I suggest that there be some form of advertisement in the major urban areas of Ontario also. We are going to be advertising for the most senior position in the chamber, as far as permanent staff is concerned, and, while I understand that we are looking for people who have some experience as parliamentary clerk, from the way I read our draft, I do not think it necessitates that individual having this type of experience. Therefore, without at least some kind of adequate advertising in the other urban areas of Ontario, we might--

Mr. Chairman: That would not be difficult to do. There is a short list of daily newspapers in the urban centres. It would not be a difficult matter and not that expensive to put a notice--that is basically what this is--in the major dailies in Ontario.

Mr. Mancini: That is what I would suggest we do. As you know, we do not change Clerks very often.

Mr. Chairman: Is it agreed that we proceed that way? We would increase the circulation somewhat by putting the ad there.

Agreed.

Mr. Chairman: The other thing that occurred to me is that it is proposed that the resumé be sent to the director of human resources. I suppose it is more protocol than anything else, but I think they should be sent to this committee. The idea of this whole exercise is that a committee of the Legislature will make the recommendation; it is not a staff job, but an assembly job.

Mr. Martel: It depends on what you are going to do with it. I would like to know who is going to draft the short list for us.

Mr. Mancini: That is the other point.

Mr. Chairman: That is what I told you. The short list will be presented to the committee by a group consisting of myself, the Speaker and Ellen Schoenberger, who is the director of human resources. We may ask for some assistance from a clerk or a table officer from the federal Parliament.

Mr. Mancini: If I can take up Mr. Martel's query, it is an important suggestion and, at the very least, this committee should have in this process a subcommittee.

Mr. Chairman: One from each caucus?

Mr. Mancini: Yes.

Mr. Chairman: Sure. We can do that. Is that agreeable? We will strike a little subcommittee, one from each caucus, that will go through it.

We were looking at the practical ramifications of this. There are not a great many table officers in the country, but it is a rather attractive position; so there may be a fairly large onslaught of applications for it. If we do not get 300 or 400 applications, it will be practical to take one from each caucus, the Speaker, myself, Ellen and some other adviser and go through 50 or 60 letters. If we get a couple hundred, we may be very busy boys and girls this summer.

Mr. Sterling: I do not mean to be a piker, but where is the salary range from \$69,500 to \$79,200 from?

Mr. Chairman: It is a civil service classification called the senior administrator's level. It is not the deputy minister's level.

Mr. Martel: Who has taken it upon themselves--

Mr. Chairman: The Board of Internal Economy.

Mr. Martel: There is a classification for the Clerk.

Mr. Chairman: No. We checked that out. There was an existing practice. We could find no motion, no regulation, nothing that established the salary level. It was simply an agreement.

Mr. Martel: The Clerk at that time carried a title equivalent to a deputy minister. Who changed that?

Mr. Chairman: The Board of Internal Economy.

Mr. Martel: The Board of Internal Economy may set the salary, but it does not have the right to change the designation.

Mr. Chairman: We could not find a designation. I have asked them to review it, but this is the information I have.

Mr. Martel: You and I both know there is a conflict between the present Clerk and the man in charge, who wants the title of being responsible for this building. Those two guys have been at each other's throats for the past six or seven years. One carried the title equivalent to a deputy minister and, lo and behold, all of a sudden something is changed without anyone's knowledge. Having been involved for six or seven years with the machinations that went on between those two fellows, I would like to know where the decision came from. What material presented by Mr. Fleming's office, if I can be so blunt, led to the decision of downplaying the role of the Clerk in the Ontario Legislature?

Whether they like to admit it or not, Roderick carried the title of deputy minister. If the Premier (Mr. Peterson) has decided to change that, fine. I want to know. I do not want it that the Board of Internal Economy, because it was loaded, got some directive from someone's office stating, "We are reducing this in terms of importance."

If they want to do it, that is fine, but I want to know. I am not prepared to sit and haggle around with this until I know where the changes have come from, based on whose recommendations and so on. That is certainly all involved. I am sure my friend Sterling raised it partially for that reason. He is aware of the same machinations that went on between the office of the director of administration and the Clerk for the past seven years.



10:20 a.m.

Mr. Mancini: If I can be helpful, I understand what Mr. Martel is saying. If my colleague feels that is a problem, we are an independent committee of the Legislature. We have been given this responsibility. We can pass a motion and make some changes in this.

Mr. Martel: We cannot appoint deputy ministers. Only the Premier can do that. I want to know whether the Premier has downplayed that role.

Mr. Chairman: If you like, we can remove the actual figures from the salary range in the ad and simply indicate that it is under review. We could seek clarification from the board on how that was done, if that is your wish.

Mr. Martel: It is worse than that. I want to know on whose advice the board made its decisions. I would like to see that. There must be a memo. I would like to see the memo.

Mr. Chairman: All right.

Mr. Martel: I want to know whether the Premier has said, "Reduce it," because he is the one--

Mr. Chairman: Not to my knowledge. I do not believe he has.

Mr. Martel: Then I would like to know how the board can interfere.

Mr. Chairman: We will get that information for you. Are there any other questions or comments you want to make? Can I have a motion then to place the ad? We would remove the salary range from it and simply state that it is under review. Can I get a motion to place the ad?

Mr. Mancini: I move the motion.

Mr. Chairman: Mr. Mancini. Is there any discussion on the motion? Those in favour? Any opposed? The motion carries. Will you do a little memo to the board for me?

#### ALLEGED CONFLICT OF INTEREST: RENE FONTAINE

The next order of business this morning is to begin the process of the hearings on the Fontaine matter. You may recall what the committee decided previously, which is that we will take today and essentially go through the documentation. I do apologize that the documentation is rather long. There is a lot of it.

For members of the media who are here, the most practical way to proceed is that we do have a list of the exhibits, which is only a couple of pages long and which we can hand out fairly freely. We have copies of it here and in the office of the Clerk. If there is anything there you want or if you want to go through it all, feel free to do that. We will make you copies. We cannot quite do it instantaneously, but if there are documents there that you would like to see, they are now tabled with the committee and they are public documents.

For the committee's purposes, we wanted to have the opportunity to go through some of this documentation and get a bit of background on it. I want

to begin by simply reiterating that this committee is a bit unusual in the sense that it is a hearing by members' peers. It is meant to determine whether a member acted properly. It is not meant to determine and cannot make any findings in terms of what you might see as being a violation of the Criminal Code or something such as that. Essentially, you are looking at the ethics of the matter. You are looking at whether a member behaved properly.

The range of sanctions is there. Basically, it is a kind of open season. In theory, I suppose this committee could decide at the end of its deliberations that something tantamount to criminal activity had occurred. The recommendation would go to the House--and the House would have to vote on it--that a member had behaved improperly to the extent that he would not be qualified even to run in a general or by-election.

You may want to look at the evidence presented and make considerable comment on it. You may not want to do that. You may want to keep it a rather short and simple process. Essentially, that is where we are. This morning, we will go through the documentation as best we can. We will attempt to answer any questions that members of the committee have.

We do have legislative counsel present. We have John Eichmanis who has done the research on this for us. So far, documents have been provided to John simply by asking and we have had no difficulty getting information from any source in Ontario or Quebec. We will proceed on that basis, but we do have a motion of the House that allows us to get a Speaker's warrant. In effect, we have the legal power to subpoena evidence before us.

If there are documents you would like in addition to the ones you now have, a simple request will get it, unless there is any complicating factor. Then we would have to get a little more formal and ask for motions to go through the committee. At this stage, if there is some information you think would be relevant and you know what it is, you can ask Mr. Eichmanis to try to get it for you. We have been reasonably successful at getting documentation. Are there any questions from the committee before we begin?

Mr. Martel: I do not know, I have not looked and it might all be in here, but can you tell me on what date after the cabinet was sworn in members had to declare whether they had shares or not--their disclosure? What was the time line?

Mr. Chairman: Mr. Eichmanis has done a memorandum which shows the time line. It might be useful to have him go over that now. It is a memo dated July 21, 1986.

Mr. Sterling: What hours are we going to sit today? Have we decided?

Mr. Chairman: It was decided that we would start at 10 a.m., go until noon and break until 2 p.m. Then we will go until the committee decides it has had enough. Normally, that would be around 4:30 to 5 p.m.

We have not set up evening sessions, but I have reminded you that the purpose of the exercise this week is to make a determination on whether it is possible to conclude this matter this week. Having had the opportunity to go through the evidence that has been tabled and hear Mr. Brandt place the matter before the committee tomorrow and Mr. Fontaine respond to that on Wednesday, if at the end of that process you decide you can make a decision, we will make it. We have agreed that under those circumstances we would be prepared to have some evening sessions to get that done.



If you determine that you have not gathered enough evidence, that there is more evidence you want and more witnesses you want to call, we will schedule them for August. That is the routine.

Mr. Sterling: There are a couple of things I would like to say before Mr. Eichmanis goes through this document.

Mr. Chairman: Okay. If there are other members who want to make some initial comments, that is fine, and then we will let John begin the process.

Mr. Sterling: First, you asked whether there were any other documents we will require. I know there is one document our caucus would like to see. That is the same kind of document that was filed with the standing committee on public accounts by another minister on Friday. Ms. Caplan was kind enough to share with the committee the very detailed and pointed questionnaire given to each member of the cabinet, as I understand it.

Mr. Chairman: Does the document have a title?

Mr. Sterling: It is divided into three parts. Compliance with the Legislative Assembly Act is part I, and part II is called Disclosure Requirements. Part III does not have a heading, but it deals with the personal background of the minister. I am not interested, nor would any members of our caucus be interested, in very private details. I understand Mr. Bell, who is the counsel for that committee, sort of vetted this document before it surfaced, and I would agree to our counsel doing the same thing in terms of anything which does not have any relevance to this committee. I believe it would have to be released with Mr. Fontaine's approval, but I ask you to ask him for this document.

Mr. Chairman: Is that agreeable? Okay. We will use the same process of vetting the document before it is tabled so that if there is private information, it is not published.

I remind members that the moment each document is tabled with the committee it is a public document. We will resolve the problem of circulation, leaks and all that. If the thing is tabled, it is public. If it does not get tabled, it is a private document until such time as any of you wish to place it in front of the committee.

Are there other documents of which anyone is aware? Are there any other comments anybody wants to make?

10:30 a.m.

Mr. Sterling: I want to make it clear at the outset that having read through a considerable amount of the documentation and having tried to unravel the corporate structure of the various companies with which Mr. Fontaine was involved, it is my conclusion that the argument I put forward at the organizational meeting to have a legal counsel to lead in questioning is probably even more important than I thought it was then. I believe that will be so in order to be fair to Mr. Fontaine more than anything else and to keep the scope of the inquiry in a focused manner and going down a focused path.

As we progress through the hearing, I suspect the questioning will branch off in different directions and it will be difficult to control. Having said that, it is up to the committee to make the decision, but I want to put that on the record once again so that we know at the outset where our caucus stands on that issue.

Second, I am not sure the placing of Mr. Fontaine's appearance on Wednesday is the correct place for him to be. By Wednesday, I do not expect to have all the answers to questions that I would like in terms of my background knowledge of the issues to place the correct questions to him. Therefore, I suspect that after Mr. Fontaine has appeared in front of this committee, questions will arise from other witnesses, knowledge of other witnesses, and this committee will want to ask Mr. Fontaine about his view of the matters as presented by other witnesses.

In the inquiry by the standing committee on public accounts dealing with Ms. Caplan, I understand she was the last witness to appear and she was put in the position of defending herself as per statements of other witnesses. I think Mr. Fontaine should be given that privilege as well. As far as we are concerned, we do not necessarily need Mr. Fontaine on Wednesday. We would prefer to have him be either the last witness or appear near the end of the process.

Third, because we have decided in this hearing that we are not going to have a counsel, I hope there will be an attempt, as Mr. Eichmanis has done--I compliment him on his work in such a short time--to develop a chronology of events as the questioning comes forward on different documents so that we can put all the documentation and happenings in a proper time frame. Mr. Eichmanis has started that process, but I suspect it will go on.

The second area or direction I ask for in the development of evidence as it is brought forward in this committee is the categorization of the events that have taken place under the conflict-of-interest guidelines. If this committee, through the evidence or through a document, finds there is a question of a conflict under the first or second rule or the duty to disclose or whatever, then I would like those particular events to be noted under those sections so there can be some focus when we get to the end, and we can look back to the records and say, "There was this document which showed that perhaps there was a conflict in this particular area."

I say this on the basis of the number of documents that I have looked at to date, the number of statements made by Mr. Fontaine and other people, the number of actions taken by Mr. Fontaine since he became a minister and some actions before he became a minister.

There is one other document that I would like. I ask Mr. Eichmanis to plot the value, volume and trading of Golden Tiger since its going public on the Montreal Stock Exchange. I do not think we have that document. Do we, John?

Mr. Eichmanis: We have one that starts in 1984.

Mr. Sterling: Is it in there?

Mr. Eichmanis: It is in exhibit 02/014.

Mr. Sterling: Was that in the pile we just got?

Mr. Eichmanis: Yes. It states "Golden Tiger Exploration Company, Montreal Stock Exchange Statistics." Starting in September 1984, it gives you an opening high-low-close volume for those shares.

Mr. Sterling: Is that weekly, daily or monthly?

Mr. Eichmanis: This is by month and it runs to June 1986.



Mr. Mancini: Can you give us the number on that again?

Mr. Eichmanis: It is 02/014AA.

Mr. Sterling: I believe that daily figures are there as well. They are probably in the prepared charts already.

Mr. Chairman: Do you happen to know the name of a document that we could get which would do that?

Mr. Sterling: Various stock magazines plot all the different stocks on an exchange. If we cannot get that, I am willing to accept what we have. Perhaps we can plot it on a graph.

Mr. Brandt: By way of clarification, are you requesting that the documentation relative to the value of the shares go back to the period of the inception of the earlier company before the name change? I raise that point because I think there is some relevance.

If you are tracking the value of the shares, which may be relevant to the discussions in this committee, it would be of some value to have those share values from the time that the company was originally started under the earlier name. It escapes me at the moment, but I can get it for you if you like. The name was changed to Golden Tiger, and you are tracking about midway during the history of the company.

There have been some comments made about either profits or losses relevant to those shares. I think that would be a relevant document. I am agreeing with Mr. Sterling that we should have a document which is slightly more comprehensive and which goes back to the inception of the company, when it was originated.

Mr. Eichmanis: I do not have the daily or monthly figures from the inception, but there is a document in the section from the Quebec Securities Commission that mentions the value of the shares in 1982, I believe, when the company became public. That initial share value is mentioned in the document. I do not have it from that date to the present.

Mr. Chairman: It will be helpful if you can give us the previous name of the company.

Mr. Brandt: Banque-Or.

Mr. Sterling: My last point is a procedural one. Will the Hansard of a day's hearings be available the following day?

Mr. Chairman: We are having some difficulty getting Instant Hansard. Will it be available the following day?

Clerk of the Committee: Hansard is trying to have this morning's ready for tomorrow morning and this afternoon's ready before noon. It may be a little faster in the afternoon. I do not know.

Mr. Chairman: It will be the following day.

10:40 a.m.

Mr. Brandt: Very briefly, this is relevant to the question of Mr.

Fontaine's appearance before the committee. When we get into a discussion on when Mr. Fontaine is to appear--I understand a decision has been made that he is to appear on Wednesday; that is the question raised by Mr. Sterling--has the chairman been advised whether Mr. Fontaine will be represented by a legal representative at this committee?

Mr. Chairman: I am told he will have counsel with him. The committee decided that witnesses before the committee have a right to have legal counsel with them but the counsel will not have an active role in the committee's deliberations; that is, will not be able to cross-examine and will not make the presentation. The witness has a right to have a lawyer present to advise him on what he might say, but that will be the extent of the lawyer's participation in the process.

Mr. Brandt: That is helpful. Thank you very much.

Mr. Mancini: I want to address two matters in particular that Mr. Sterling has raised. It is my understanding that this committee spent a great deal of time working out and finally accepting an agenda, so at this point I do not believe I would favour a change of agenda. We went through quite a bit of time a week ago to try to accommodate everyone, even though a vote could have carried to have had one day of hearings last week. Because two members of the opposition could not make it, we withdrew our support of that motion, and that is why we are here today instead of last week. I think we have been exceptionally co-operative about the agenda.

The other matter is that of counsel. We also spent a great deal of time discussing that issue. It was resolved. I hope we do not open it up again and spend the rest of the morning reconfirming what we already confirmed in our last hearings. I hope we can go on to the briefing our researcher has prepared for us.

As far as whatever documentation Mr. Sterling feels he needs, we should try to get everything we can. We have no qualms there. Mr. Sterling requested some things, and I think John has already shown a document that may have answered Mr. Sterling's request. If we can get more, that is fine.

Mr. O'Connor: If I may speak very briefly on only one point, I agree with Mr. Sterling on the order of appearance of witnesses. It may be very much in Mr. Fontaine's interest and he may well wish that he not be heard as early in the process as we have scheduled him, since by that point there will have been only one substantive witness other than the witnesses who will take us through some routine documentation. There will have been only Mr. Brandt's statement to reply to. If, as is anticipated, there are numbers of other witnesses called who may shed new light and information on the complicated set of facts we are dealing with, I can see that Mr. Fontaine might be quite anxious to have an opportunity to reply to what has been said after he has gone and, theoretically, has no chance to come back.

If we are wedded to his being here on Wednesday and perhaps Thursday and that is unalterable, could we be flexible enough, in the event subsequent witnesses raise other matters, to permit him to return to reply to them, at our request or at his request? More important, he may want that opportunity.

Quite seriously, I am thinking of being as fair as possible and appearing to be as fair as possible to him. As I said at the last meeting, there is an awful lot at stake, in particular for his future and his career. I think it is fair that we at least permit him to return if he wishes or if we wish.



Mr. Martel: On the matter of the witnesses, my initial request was to have Mr. Fontaine in right at the beginning. That does not preclude him from coming back. That was just so he could present his position to us, as he attempted to do in the Legislature. I am not sure that at that stage I was even prepared to try to cross-examine him.

The subcommittee wanted to have Mr. Brandt here to lay before us the material we want to review, allow the former minister to respond, or at least put his position forward clearly, and then start the work from there, calling witnesses and so on. I do not see that Mr. Fontaine is precluded from coming back. I suspect both he and the committee will want to go into it after we have looked at the other documents. The subcommittee made that suggestion to allow an initial opening up of the discussion.

Speaking to the other matter of the counsel, I have thought hard and long about this. I went over to the other committee to speak to Mr. Epp and Mr. Philip about it. They tell me they are absolutely delighted they had counsel. Some of them sat on the Astra/Re-Mor committee, which was a fiasco in many ways. I spoke to Herb and to Ed the day after we met here and they were glad they had counsel to keep things going in the direction they wanted. Counsel told them where they should go and what they should not do. In their opinion, this made the proceeding a lot better.

I still believe we should do what we decided. They are allowing counsel to lead off. I am not sure whether I am particularly interested in having counsel show us all their smarts--let me put it that way for all the legal beagles in the building. It might be important, however, at least to keep us in the right direction. To prove they can phrase a question better than the rest of us is for the birds, quite frankly. I am not sure I want legal counsel do the questioning for us. I think we are quite capable of asking questions, but based on what went on with Re-Mor and the various trust company problems, we might be wise to re-evaluate our position.

Mr. Treleaven: There must be something wrong with my thinking, but I agree with Mr. Martel on both points.

Mr. Chairman: The two of you are in big trouble.

Let me put it on the record again. We will do it by means of motions at committee. We will order our business that way for this week. That is not meant to preclude subsequent appearances by Mr. Fontaine or anybody else. You may be correct. If you decide to carry these hearings further, there may be an occasion when you want to ask him back for many more days of hearings or he may want to ask the committee if he can appear on another occasion. We will entertain that at the time, but for this week, we have ordered our business by motions of the committee.

It would be ludicrous to begin what is tantamount to a preliminary hearing without providing an occasion when the allegations can be put forward and the member in question at least has the opportunity to appear and make a statement. It would be pretty hard to hear both sides of an argument if we did not provide the opportunity for both sides to appear and present the argument. In essence, that is what is happening this week.

If you decide at the end of these deliberations that you want more witnesses, it seems only fair that the member in question will not only want to follow the proceedings but will also seek the opportunity to clarify statements or respond to allegations that were made subsequently or whatever.

The order is based on a rather old and simple principle that, first, the committee will hear what is alleged to have happened that would be construed as misbehaviour on the part of the member and then the member will be allowed the opportunity to respond to that, as he would in the House on a point of privilege. We have set out a relatively simple process this week, and that is it.

10:50 a.m.

Mr. Laughren: I was not here when the committee set the schedule. Did the committee decide not to go to Cochrane North during the week of August 14?

Mr. Chairman: Yes. Let me respond to a couple of other matters that various people have raised. I tend to agree on the use of outside counsel rather than the legislative counsel's office if we were a committee that was determining wrongdoing in the stock market or a financial institution, some area where we as members had no expertise. We have not been asked to do that. I am going to remind you a few thousand times in the next little while that this is not our jurisdiction. We are not here to investigate allegations of stock market activity, investment activity or anything else. We are here to look at the activities of a member of the assembly. That is our job.

I know the other material is relevant. That is why you have piles of documentation in front of you. We will try to provide as much information as you want. We will provide all the expertise you can think of to help in your deliberations. However, the job of judging whether a member of the assembly behaved properly is before nobody else but you. You are his peers. We cannot hire anybody who can make that judgement call. Frankly, we could not hire very many people in the world who would be able to assist you much in making that determination. We can get expertise as to whether documents were filed properly and we can get expertise to interpret any information on activities that might have happened outside the assembly, but the question in front of you is rather straightforward; namely, was his behaviour appropriate for a minister of the crown and a member of the assembly? That is the judgement you will make.

It is going to be a difficult task to separate what now is becoming a mountain of information into what is relevant for our judgement purposes and what is not, but we have been sent that task by motion of the House and we will try to proceed with it. We are going to be hindered a little for the first day or two. I know most of you are like me. This information was on my desk when I arrived this morning. I cannot say with any honesty that I have had a chance to do anything more than peruse it, and it deserves more than that. I am asking you to take some time. This will not be helpful if we are sitting in the middle of tonight, but if we are able to adjourn this afternoon, it will assist us all to have an opportunity to go through the material in more detail than we have had the chance to do this morning.

I guess that is about it.

Mr. Sterling: I will not belabour the point because I know where we are going to go. I just want to keep it straight that the argument for counsel is not at all that he would be in judgement, but that he would organize the questions and the bringing forward of evidence so that we are not all over the map. That was our point.

Mr. Treleaven: As Mr. Eichmanis starts leading us through this, he



should start at the beginning with everything. Will you make as clear as you can what our instructions are from the Legislature? As I understand it, they are not specific, but very general. So that we keep to as narrow a path as possible or as close to our instructions as possible, will you keep underlining what the Legislature has given us to do?

Mr. Chairman: I will read the order that was passed on motion by Mr. Nixon: "That the matter of René Fontaine's compliance with the conflict-of-interest guidelines be referred to the standing committee on the Legislative Assembly for review and report to the assembly without delay." The matter that is before us is his compliance with the conflict-of-interest guidelines.

Mr. Treleaven: It therefore has nothing to do with the Legislative Assembly Act. Am I correct in that?

Mr. Chairman: Let me put it this way. It would be impossible to sort out anyone's responsibilities as a minister of the crown from his or her responsibilities as a member of the assembly. One cannot be a minister of the crown without first being a member of the assembly.

Mr. Treleaven: Are you saying that it is inherent, that it is implied in the statement from the Legislature, the motion that you read out, that in the guidelines reference is also included the Legislative Assembly Act reference? The chairman is nodding yes.

Mr. Chairman: Yes.

Mr. O'Connor: May I correct one statement which I believe was incorrect. I think you can be a member of the executive council without being a member of the assembly.

Mr. Chairman: However, you cannot get referred to this committee without being a member of the assembly because it is a committee on the assembly. That is why it is here.

Mr. O'Connor: He could have been a member of cabinet without being a member of the Legislative Assembly.

Mr. Chairman: Yes. Technically, one could be a member of the cabinet. There are precedents for this in the federal parliament; we are not familiar with any here. There are precedents for other than members of Parliament being appointed to the cabinet.

Mr. Treleaven: Since we have expanded it from the conflict-of-interest guidelines to the Legislative Assembly Act, is there anything else inherent in that? Are there any other acts, statutes, guidelines or policies which are also inherent or implied in this reference from the Legislature?

Mr. Chairman: I would say no. The strictest interpretation would be simply that the only matters before us are those regarding compliance with the conflict-of-interest guidelines. It would be very difficult to preclude anyone raising a matter having to do with the fact that he is a member of the assembly. I do not think we could do that. That would be about the extent of it; however. I cannot see at this time how you would bring in any other legislation or any other activities. I cannot fathom how you would put those things properly before the committee.

If we did stumble upon something like that, the best we could do would be to take note of it and suggest in our report to the assembly that some other group which has clearer jurisdiction on the matter should be informed--if we discover something improper that might be, to use a wild exaggeration, criminal activity. We certainly have no jurisdiction over that. We cannot lay any criminal charges and we do not have jurisdiction to hear what they might be. If we became aware of them, it would then be our job to report to the assembly and the Attorney General (Mr. Scott) that we are aware of these facts and he should investigate them, but they are not in front of the committee.

Mr. Treleaven: Is the Executive Council Act another act that is in it?

Mr. Chairman: To make the distinction, that is not in front of us and we are not a committee on the executive council. We are a committee of the assembly. I do not think we could ever deny that. We do have a reference on the matter of conflict of interest and that has been put in front of us by a motion. Those two jurisdictions are before us. Other jurisdictions and responsibilities are not.

Mr. Treleaven: If the Legislative Assembly Act is inherent or implied in the reference, is not the Executive Council Act, which deals with and authorizes the cabinet ministers, also inherent or implied?

Mr. Chairman: We could take a look, for example, at whether the guidelines are put in place because of the Executive Council Act. You could certainly make an argument that that brings it before the committee as well.

I suggest that the first order of business is to have John Eichmanis take you through the chronology of events and that memorandum.

Mr. Eichmanis: You mentioned earlier, Mr. Chairman, that the members have not have a chance to review the documentation and whether they would want to have a quick--

Mr. Chairman: Let us do this first and then go through the second thing I am going to recommend, the list of exhibits, to give you a framework.

Mr. Sterling: Another document we should look at near the beginning of the process is the guidelines and try to work out what they mean.

11 a.m.

Mr. Eichmanis: If you look at the memo I wrote, which is before you, I tried to give a very factual chronology of events. For example, on June 26, 1985, you can see what Mr. Fontaine appears to have held that would be the subject of conflict-of-interest guidelines. I decided to place myself in his position on June 26, and these are all the things I would have to deal with.

Mr. Martel: May I ask you to go back once again, so I can put it into context? By what date does he have to--

Mr. Eichmanis: Mr. Martel, if you go to exhibit 2/008 and look at the conflict-of-interest guidelines for ministers--there is a problem here since these are dated September 1985--on page 3, the middle paragraph says, "All disclosures required of ministers will be filed with the Clerk of the Legislative Assembly where they will be available for public examination." It does not give a specific date that I can see.



Mr. Chairman: It might be helpful here to let John simply proceed through this and take questions afterwards. I sense that a lot of your questions are going to be answered if he gets a chance to go through it.

Mr. Sterling: I think Mr. Martel is trying to ask what time frame we are--

Mr. Chairman: I know what he is trying to ask. Let us give John an opportunity to present the stuff.

Mr. Sterling: There are dates, with respect, on page 3, "A minister desiring to set up a trust should have established a trust and disclosed its management provision by the end of the year." One date you have is December 31, 1985.

Mr. Eichmanis: I thought he was referring to the tabling with the Clerk. I am not sure.

Mr. Martel: All I want to know is by what date everything had to be tabled, so I can put into perspective when the trading starts, if trading starts. I am trying to work against some date by which all this had to be disclosed to someone.

Mr. Chairman: Maybe if you let John go through this, we might be able to do that for you.

Mr. Martel: You do not follow me.

Mr. Eichmanis: If you are asking when it has to be tabled with the Clerk, as Mr. Sterling said, if you are talking about the disclosure by the end of the year of any trust, then it would be the end of the year, whatever that means. I do not know what the end of the year means. I assume it means December 1985, but I do not know. The guidelines are not specific.

Mr. Martel: The reason I am trying to put that into perspective is that up until the point that happens, I am not sure what is relevant. If it is December 31, then everything prior to December 31, because he has not had to comply until that date, is irrelevant, or much of it is. There is a difference. If he had to declare it all the day he went into cabinet, what happened in the first five or six months is a completely different thing. I am trying to get the dates so I can put this, on which you have done an excellent job, into some perspective.

Mr. Eichmanis: At the bottom of page 2, it says: "Members of the government will be given reasonable time to comply with these guidelines. Their land holdings will be made available for disclosure within a few days and the disclosure of other holdings, where applicable, will be made within a month."

Mr. Sterling: If we take October 31, 1985, as the public disclosure date, because I think the Premier brought his guidelines down in September--is that not correct?

Mr. Eichmanis: They were dated September.

Mr. Brandt: One of the relevant documents in the series of documents in exhibit 2/008 is the letter from the Assistant Deputy Attorney General, Blenus Wright, in the fourth paragraph. I will read it into the record.

Mr. Martel: What page is that?

Mr. Brandt: The pages are not numbered, but it is the sample letter to newly appointed cabinet ministers. It goes on to state: "Within three months after you were sworn in as a cabinet minister"--the three months is mentioned there--"you will be required to indicate whether you have divested yourself of share interests in public corporations or place such holdings in the hands of a trustee. If you have public shares which will be placed in a trust, I enclose a copy of a draft trust agreement for your perusal."

Ostensibly, that three months would take place from the time from the time of the cabinet minister being sworn in, which was June 26, I believe. That will answer your question in part.

Mr. Eichmanis: Are you looking at the September 1975 attachments or the 1972 attachments? I have given to the committee two different guidelines.

Mr. Brandt: I do not have the date of that letter.

Mr. Treleaven: Can I get back to what Mr. Martel was talking about? Can you give us a thumbnail sketch to put the time frames in perspective? Before we get into the trees, can we have an overview of the forest? Otherwise, the trees are not going to mean anything to us as we go by. The significance of a date is not going to mean anything to us. If you can give us a thumbnail sketch, then all of a sudden bells might go off on September 25 or October 2 that otherwise will not. I am with Mr. Martel on this, to get an overview.

Mr. Eichmanis: The difficulty is that I want to understand the wording. If you look at the bottom of page 2, it says, "Members of the government will be given reasonable time to comply with these guidelines. Their land holdings will be made available for disclosure within a few days and the disclosure of other holdings, where applicable, will be made within a month." What does that mean? From the time they were sworn in?

Mr. Treleaven: Are you saying that the dates are very fuzzy?

Mr. Eichmanis: I am saying I do not know and I cannot tell you when the month starts.

Mr. Sterling: It appears that until September, there were no conflict-of-interest guidelines for the new government. Then in September 1985, we have conflict-of-interest guidelines.

Mr. Eichmanis: I do not know whether the 1972 guidelines were in force until September and the September 1985 guidelines came into force after that date. It could be that the 1972 guidelines were not in force.

Mr. Sterling: Maybe you could ask the Premier's office that question.

Mr. Treleaven: Maybe this is part of what will come out in evidence. Maybe this is what we will have to get someone here to ask. We do have to begin at the beginning. It makes it a little bit irrelevant if, with this three inches of paper we have in front of us, we do not have the fundamental guidelines on what the rules of the game were at any particular date.

Mr. Eichmanis: I did not write the guidelines. There is no way I can explain that.



Mr. Treleaven: You are saying this is going to have to come through a witness.

Mr. O'Connor: Perhaps another source of information would be the other committee studying this. They are further down the road than we are and they may have already covered this ground.

Mr. Eichmanis: That is possible. I was gathering this information; I was not following the other committee.

Mr. Treleaven: I read through the early parts of that and they did not deal with it at the very beginning. I noted that in the Caplan matter they did refer to sections 10 and 11 of the Legislative Assembly Act. Therefore, I wanted to get it clear and I am trying to draw a parallel as much as possible, but they did not get into these time frames.

Mr. Martel: The difficulty I am having is trying to put a handle on what went on. If I do not know at what stages things were contrary to the guidelines, how do I know whether the minister has acted improperly or properly? I have nothing to put it against. As I read this material, part of our problem this morning is that we are trying to put it in some perspective to start, a place from which to launch, without knowing what all this meant.

11:10 a.m.

Mr. Sterling: I noticed legislative counsel nodding when I was saying a few things. Perhaps the dates that we can at least hang our hats on this morning, before we get the answer to the question about whether the old guidelines were in place or not, are the dates of October 31, 1985, and December 31, 1985. The way I read the last paragraph of exhibit 8, on October 31, 1985, the land holdings will be made available for disclosure within a few days and disclosure of other holdings were asked to be made within a month. I take that to mean within a month of some time in September when this was issued, and therefore I go to the end of October. Why do we not take those dates as the dates for now and work on that assumption?

Mr. Martel: Does anyone know when these guidelines came down?

Mr. Sterling: In September.

Mr. Martel: When in September? Is it September 1 or September 30?

Mr. Sterling: It just says September.

Mr. Martel: I know. That is what it says on mine.

Mr. Treleaven: You have to start at the beginning of everything. If you are driving down Highway 401 and you say he was going 110 and somebody says there is a law that says you are not supposed to go faster than 100, it is important to find out when the law was passed, before or after he was going 110. Mr. Sterling is trying to help us out with this. It is building a house on some sand to try to build on his assumption as to when this begins. You will get used to the Oxford analogies after a while.

Mr. O'Connor: Two in one short speech.

Mr. Treleaven: I was trying to stay away from them.

Mr. Eichmanis: This is a problem I had when I was doing the chronology. The guidelines do not provide me with information to be able to say when the process begins and when it is supposed to end. Despite those limitations, under June 26 I included the assumption; it appeared that he had these things: eight parcels of land in Ontario, was a principal in René Fontaine Holdings and owned 63,294 common shares of United Sawmill, which in turn owned 50 per cent of Hearst Management Inc. He owned 19 preferred shares, 14 preferred A shares and 126 common shares of Claybelt Lumber, as well as 100 shares of Evolution Hearst, 15 shares of La Maison Verte, one share in La Panache, one share in le Nord and one share in Les Industries Nordex, which are all private companies. Of course, the guidelines deal separately with private companies and public companies. Reference should be made to the different ways the guidelines deal with private and public companies.

As well, Mr. Fontaine is owed \$13,000 by Evolution Hearst and \$50,000 by both René Fontaine Holdings Ltd. and United Sawmill Ltd. There is a provision within the guidelines that deals with debt interests.

With respect to public corporations, Mr. Fontaine owns 45,354 common shares of Golden Tiger Exploration. Mrs. Fontaine owns 3,000 shares and adult children of Mr. Fontaine own 26,500 shares of Golden Tiger, of which 10,000 were registered by mistake in Mrs. Fontaine's name.

Mr. Sterling: Do we know what 63,294 common shares in United Sawmill represent in regard to total issued shares?

Mr. Eichmanis: I did not check that out, but I can.

Mr. Sterling: Will you ask that question, please?

Mr. Eichmanis: Yes.

Mr. Chairman: It will assist us a bit if you hold the questions until John Eichmanis goes through this. I hope out of this list will flow a number of things about which you want more information. It will assist us a lot if you hold your questions until he has gone through it. You might find that your question is answered by the end of the exercise; if not, let us know and we will get whatever information you want.

Mr. Eichmanis: In addition to the common shares of Golden Tiger, Mr. Fontaine owns a further 17,172 shares of Golden Tiger that are deposited in escrow with Guaranty Trust. I should explain that the brown envelope you have just received marked "Rush" has two policy statements dealing with escrow accounts under the Quebec Securities Commission. One of them deals with exploration mining companies and the provisions under which escrow agreements are to be arranged with respect to mining exploration companies. That is detailed in this policy statement Q4.

Physically, the shares are held by Guaranty Trust, but from talking to the Quebec Securities Commission, my understanding is they cannot be released unless both the company and the Quebec Securities Commission agreed to their release. That is the one condition of the escrow agreement.

Mr. Martel: On a point of clarification: I am not questioning the material. It is just so I understand it.

Mr. Eichmanis: Okay.



Mr. Martel: On the first page, you say Mr. Fontaine had shares in private companies. I want to know if you put the \$13,000 and the \$50,000 in the same category. That is all. You seemed to pause.

Mr. Eichmanis: I believe those are private companies.

Mr. Martel: They are private but they fall in the same category as distinct from public. That is all I am trying to clarify.

Mr. Chairman: That is what he said while you were having your conversation, Mr. Martel.

Mr. Martel: I am sorry.

Mr. Chairman: We do not mind going over it two or three times.

Mr. Eichmanis: Mr. Fontaine, in addition, owns 1,200 shares of Paladin Industries and 5,000 shares of Villeneuve Industries. I am making the assumption that on June 26 all those things were owned by him. It is quite conceivable that some of those shares were acquired subsequent to June 26. I do not know that. I am making the assumption that is the status of his financial position as of June 26.

Mr. Treleaven: When you use the word "owned," you are using that in a very loose sense.

Mr. Eichmanis: I am not sufficiently expertise to know whether--

Mr. Treleaven: The word "owned" can mean a lot of things.

Mr. Eichmanis: I am using it in the sense that Mr. Fontaine used it.

Mr. Brandt: He subsequently sold some of it, so he must have owned it.

Mr. Treleaven: No. He could have sold it as trustee instead of in his exact own private ownership.

Mr. Chairman: You guys want to hire yet another lawyer to explain this thing. Give me a break.

Mr. Eichmanis: As well, on June 26 Mr. Fontaine was an owner of United Sawmill along with his wife, his sister and a third party and was a director of both United Sawmill and Hearst Forest Management.

That is as of June 26. Then the question arises, depending on which set of guidelines we are talking about are in place, whether the 1972 guidelines or the September 1985 guidelines, what does Mr. Fontaine do to comply with those guidelines?

From the information I received, I noted in the material that is before you that on July 25, "the Northern Miner reports that Mr. Fontaine has resigned from the board of directors of Golden Tiger Exploration and Mining Co." As well the "annual report of Golden Tiger no longer lists Mr. Fontaine as a director of the company on July 24, 1985." Then you have to go back to the guidelines to ask whether this was required of him, whether the guidelines required him to divest himself or to get rid of these directorships.

Mr. Martel: They do not come until September.

Mr. Chairman: Let me try to clarify this. It would be reasonably clear that on the day when a minister took the oath of office, there was at least precedent for having guidelines of sorts. He would have been aware of them and it would not be unreasonable to say that though you would not have to slap down all the documents right away, guidelines have always been in effect for members of the cabinet. Newly sworn-in members would be aware that they would have to start to get their papers in order. One would also be aware, at that point, that the Premier (Mr. Peterson) was intending to review those guidelines. At the very least, the precedent would be that existing guidelines were in place. They may be altered somewhat as they were by statement in September, but he would have been aware of that. He would have that awareness factor operating. Whether new guidelines were being prepared or not, existing guidelines were in place.

Mr. O'Connor: It is fair to say that given the statements the Premier had made with regard to this subject prior to the new guidelines coming down, Mr. Fontaine might have expected that the new guidelines would be more stringent and stricter than the previous guidelines.

Mr. Chairman: Yes.

Mr. O'Connor: He should have been aware it was necessary to comply with at least the so-called "looser guidelines" that existed under the previous government.

Mr. Chairman: That is reasonable.

11:20 a.m.

Mr. Treleaven: Is it not also possible that he would make the assumption that our previous government had been in for 42 years--you have said under an assumption. He could also assume that those guidelines had ended with the previous government and that there was either a hiatus at that point, going forward--

Mr. Chairman: No, I do not think so.

Mr. Treleaven: Do you have any assumption that this would continue, that a policy would continue through governments?

Mr. Chairman: No.

Mr. Eichmanis: Then in September the new guidelines were promulgated, dated, tabled, what have you. The next sequence of events is that on December 10, 11 and 12, 1985, Mr. Fontaine's shares in Golden Tiger were sold. These were the ones that were not in escrow.

Again, you have to go back to the guidelines to determine what the time frame was for the divesting of those shares and whether he was in compliance with those guidelines. You have to look at the section in the guidelines dealing with public companies, which is on page 2.

As well, on December 23, Mr. Fontaine transferred shares of United Sawmill into a blind trust. Mrs. Fontaine did the same on December 30.

Mr. Treleaven: Is that into blind trusts or out of blind trusts? The ones that are in go out or is it into? Which do you mean?



Interjection: Into.

Mr. Eichmanis: At the same time, Mr. Fontaine continued on the boards of directors of United Sawmill and Hearst Forest Management to the end of December. On January 12, 1986, Mrs. Fontaine's 3,000 shares in Golden Tiger were sold. On January 30, Mr. Fontaine forwarded his resignations from the boards of directors of United Sawmill and Hearst Forest Management.

On January 31, 1986, the minister's disclosure statements are transmitted to the office of the Clerk. Mr. Fontaine declared that shares in private corporations have been placed in trust with Canada Trust. The companies listed are René Fontaine Holdings, United Sawmill Ltd., Hearst Forest Management, which is 50 per cent owned by United Sawmill, Claybelt Lumber, Evolution Hearst, La Maison Verte and La Panache. The statement includes that Mr. Fontaine has no share interests in public corporations. Mr. Fontaine also declares that he owns eight parcels of land.

The disclosure statement is exhibit 2/009. In order that there be no confusion, attached are the accounts statements of Mr. Fontaine and Yolande Fontaine. Those were tabled on June 26, 1986, when he made a statement. They appear together here just for convenience; that statement was not tabled along with the other two pages at the end of January 1986.

As of January 31, Mr. Fontaine did not declare his escrowed shares in Golden Tiger Exploration. He did not declare 1,200 shares in Paladin Petroleum or 5,000 shares in Villeneuve Industries on the grounds that he believed them already sold by his brokers.

Mr. Fontaine also did not declare one share in Les Industries Nordex, nor that he was owed \$13,000 by Evolution Hearst and approximately \$50,000 by René Fontaine Holdings Ltd. and United Sawmill. These outstanding debts have been in his trustee's control since January 31, 1986. Mr. Fontaine also did not declare one share in le Nord newspaper. Finally, on February 5, Mr. Fontaine's shares in Villeneuve Industries were sold and on February 13, 1986, his shares in Paladin Petroleum were sold.

Mr. Treleaven: I have a question. By the word "trustee" in the sixth line from the bottom, do you actually mean trustee? If so, who and what is that trustee? Is that Canada Trust, the blind trust, you are referring to?

Mr. Eichmanis: You have to go to his disclosure statement.

Mr. Treleaven: Does he have trustees other than Canada Trust, which is referred to at the bottom of page 2 and the top of page 3?

Mr. Eichmanis: If you look at page 7 of his disclosure statement in the House, which is exhibit 2/010, the last sentence in the first paragraph on page 7 reads, "I am told by my lawyers that I should list these items in my disclosure statement even though since January 31, 1986, they have been in the sole control of my trustee."

Mr. Treleaven: So when you use the word "trustee," you use it in ignorance, the same way I do.

Mr. Eichmanis: I have no information other than the public information.

Mr. Treleaven: By "trustee" he could mean the escrow agent or Canada

Trust or any other trustee, such as the trustee of family trusts set up for estate purposes, etc. He could mean anything by the word "trustee."

Mr. Eichmanis: I do not know.

Mr. Treleaven: You mean, "Yes, he could have meant any of those things."

Mr. Chairman: I thought I heard him say he did not know.

Mr. Treleaven: I was looking at counsel, who was nodding.

Mr. Chairman: We can only translate into two languages here. We cannot get into Oxfordese.

I thought I heard the committee say that in addition to the information it had, it will need a statement from the Premier's office as to the exactitude of the conflict-of-interest guidelines that were in place on the date of taking office. We also need some information from them on the pertinent point of when the cabinet was told of new conflict-of-interest guidelines. The public statements are irrelevant if the cabinet was told at the beginning of September and no public announcement was made until the end of September. The pertinent point is when the cabinet was told of them. We need clarification on that.

Mr. Treleaven: And when the Premier's office considers them to have been in effect.

Mr. Chairman: That is what we are saying. The moment when they took effect is the pertinent point.

Mr. Laughren: Does that also include the undated letter in the file?

Mr. Chairman: Yes. We should try to clarify the status of that letter, whether it was just a letter included in the package or when that letter was given as notification to ministers.

Mr. Laughren: Because of the three-month reference.

Mr. Chairman: Yes.

Mr. Sterling: Mr. Eichmanis, on page 3 when you talked about Golden Tiger, because conflict-of-interest guidelines include a spouse's shareholdings, you might have noted Mrs. Fontaine's shareholdings there. I do not know whether you are going to work on this document as a chronology of events. If we are going to keep a record of chronology and add details to it, that is one detail that is relevant and is not there.

Mr. Chairman: This is not testimony provided to the committee. This is a researcher going through public statements or public documentation on the matter that is already known. It may lead to questions of Mr. Fontaine, for example, as to what he meant when he said "trustee." It may lead to a series of questions of him or of other witnesses on various events. These are the known facts that have been put on the public record in some way and that we have been able to ascertain so far. They may also be incorrect, but at least they have been stated publicly. That is the basis upon which they are presented to you.



Mr. O'Connor: One point in the category you mentioned is on page 2 near the top. In the brackets you refer to 10,000 shares registered by mistake in Mrs. Fontaine's name. The basis for that so-called fact is Mr. Fontaine's statement. There is no evidence to ascertain that it was, in fact, a mistake or how it got there.

11:30 a.m.

Mr. Eichmanis: Again, I am simply repeating what--

Mr. Chairman: To clarify the limitations here, all it is possible for Mr. Eichmanis to do with this material is to take what someone has put on the public record and present it to you. If you believe an error was made or a fact was not properly presented somewhere, you will have the opportunity to question that when the witnesses appear. All John can do is to put it in front of you. There are some limits on that.

Mr. Mancini: I ask the indulgence of the committee. What is this letter with no date to which we keep referring?

Mr. Sterling: It is exhibit 8.

Mr. Chairman: If that letter was actually sent, we need to find the date on which it was sent.

Mr. Sterling: It is part of exhibit 8.

Mr. Brandt: I want to make a brief point. Some discussion has centred on the relevant dates. I think it is important that we receive the specifics of that information from the Premier's office, but I would like to point out that in both the guidelines for cabinet ministers that were in place as of 1972 under the previous government and subsequently revised, the documentation of which we have in the form of a policy position in document 2/008, in the last paragraph of those policy statements with respect to guidelines, they both state the same thing. "These guidelines are not exhaustive, nor could they, in reality, embrace all possible situations representing or suggesting a conflict of interest."

I would like to put the position before the committee that, irrespective of dates relevant to a particular trigger point for a cabinet minister or a member of the Legislature who is in a privileged position, namely, someone who is serving in cabinet, whether that be Mr. Fontaine or whoever, there is an implied behaviour pattern that should establish itself with the members of this committee as it relates to any of the activities that took place from the time that member was sworn in as a cabinet minister.

Surely the committee would not take the position that prior to the disclosure, prior to actual trigger points being brought before us in terms of specifics, which you are going to get, I understand, that none of the activities from the date of the minister being sworn in is of relevance to this committee.

I want to make that point, because from the documents I have read to this point, I think there were various activities that were carried on with respect to Mr. Fontaine's interests that have to be brought before this committee. Whether they were proper or improper is for the committee to decide, but we should not completely ignore the period prior to the conflict-of-interest guidelines triggering at a specific time.

The other period is also relevant, because obviously, and I am dealing with a hypothetical situation, a member of cabinet sits at the time he is sworn in, information is privileged to that member of cabinet as of that time, and certain dates are required in terms of disclosure. We all understand that; but a member of the Legislature who does have the privileged position of sitting in cabinet could take advantage of that position, in some fashion, prior to the disclosure. I want to clarify that point for all members of the committee because I think it is relevant.

Mr. Martel: The only reason I wanted that is that I think you are right. You are judging it in two different segments then. One is clear-cut. If it says on December 31 or October 31 he had to do this, that is an easy thing to make a decision on. Either he complied with it or he did not. The other one is a little more difficult. The other part you are adding to it is that, yes, a person could use his influence, based on knowledge he received even prior to that time. I am not dismissing the one, but I think you have to look at it in two different sections.

Mr. Brandt: I do not disagree with that.

Mr. Chairman: I think what is reasonable for this committee to consider--and we are not helped by the fact there is no law governing our behaviour nor, in my view, is there really one for the cabinet--is that each of us is still a member of the assembly and the conflict-of-interest problem still faces us. We could and we probably do vote on laws which, in the long run, someone out there could claim is a conflict of interest and that we could somehow benefit by them. That argument can be made, and we cannot deny that.

Whether or not we are able to determine that a statement was made that the cabinet must obey, follow and be aware of existing conflict-of-interest guidelines laid down by a previous government, it seems reasonable that each member of the assembly would know that such guidelines existed, that there is such a thing as having a conflict of interest and that guidelines had been laid down.

Whether or not when he was sworn in guidelines were laid down again to say, "Until we write new ones, these are the old ones;" whether or not there was none at all on the books or whether or not anybody said, "Ignore those old guidelines; we will write some new ones," as a member of the assembly and a member of the cabinet, one is expected to know one could be accused of having a conflict. To that extent at least, the conflict of interest exists, whether or not it is written in a guideline or a law. That is what we are hearing.

Are there any other questions that come out of this first memo on which you want clarification?

Mr. O'Connor: I have one small point. Are Hearst Management Inc. and Hearst Forest Management Inc. the same thing?

Mr. Eichmanis: Yes. Because of the volume of documentation on Hearst, I have not had a chance to review what is in there. I have simply glanced at it, and my understanding is that this has been an ongoing matter with the ministry from way back when.

Mr. Treleaven: On pages 2 and 3, all names you refer to are corporations. When you shorten up and leave off "Ltd.," etc., there are no partnerships or limited partnerships. They are all private or public corporations. Is that correct?



Mr. Eichmanis: That is my understanding.

Mr. Chairman: Perhaps at this time I should ask whether anybody is unhappy with the facts as John has presented them. It strikes me that if you want to proceed in this manner, you now have before you the pertinent facts as we know them off the public record, and we would now be searching for additional information and other aspects of it. There is no disagreement over the public information that has been presented this morning.

On page 3, where John went over what we know from the public record, in one sense of the word, the minister did not declare. There are those who would argue that in itself is clear evidence, guidelines are not, that there was a conflict of interest. That allegation could certainly be made.

John, is there anything else you want to go through with the committee?

Mr. Eichmanis: If the committee is interested in the matter of the escrow, reference should be made to the brown envelope that was handed to you.

Mr. Sterling: We have a lot of brown envelopes. Is it number one or number two?

Mr. Eichmanis: I apologize for using that term. I just wanted to clarify what is before you. You will see there is policy statement, Q-8. It deals with escrow requirements for a first distribution with a prospectus. If you read the first paragraph, you will see it does not apply to distribution of securities of an exploration company. That is why there is a second policy statement Q-4, which deals with mining exploration companies. In particular, point 5 deals with requirements to place a certain number of securities in escrow. That deals with the policy, and these are the policies of the Quebec Securities Commission. I wanted to make sure you are aware of those two documents, which do not appear with the rest of the file.

Mr. Mancini: They must have missed it?

Mr. Eichmanis: That is correct.

Mr. Treleaven: That was the Quebec company or the Dominion company?

11:40 a.m.

Mr. Eichmanis: My understanding is that Explorations Banque-Or Inc. or Golden Tiger is a Quebec company incorporated and the incorporation papers are in the fact file from the Quebec Securities Commission.

Mr. Treleaven: I am showing that I am a bit of a dinosaur, but did it have the capacity to hold land in Ontario?

Mr. Eichmanis: Yes, I believe so.

Mr. Brandt: Exploration rights.

Mr. Eichmanis: Exploration rights; claims, if you like. There is an exhibit showing there are 108 claims in Ontario.

Mr. Treleaven: It claims it did not own land; it did not hold the fee simple to land. We are into federal-provincial jurisdiction. Those of you who have done corporate law later than I have will be more knowledgeable. At

one point, four or five years ago, you had to have an extraprovincial licence, etc., for a Quebec corporation to hold in Ontario.

Mr. Eichmanis: I am sure I cannot answer that.

Mr. Chairman: If I could intervene here, this might be a good place to start making our distinctions. It is of interest to us what might be the policies of the Quebec Securities Commission on matters such as this, but that is not what is before the committee. We are determining whether a minister of the crown in Ontario had a conflict of interest. The distinction would be that he might well have conformed to the security commission in Quebec or anybody else's set of rules in the world and we may still find that that is not good enough, or that is not what we think to be proper.

On the fact that ownership in a mining company or any other company was put into some other jurisdiction, we may determine that is irrelevant as far as we are concerned. You cannot put it in the hands of an American company and claim that you do not have a conflict any more. It is our job to determine whether the conflict existed here. The title to the property, how you did it, whether it conformed to security commissions elsewhere are of interest to us as a committee, but that is not what we are determining here. We are back to the basic question of whether there was a conflict.

Mr. Sterling: I do not think this committee would be unreasonable if Mr. Fontaine was not able to sell his shares in Golden Tiger because he was restricted by Quebec security law from doing so. We have to know that.

Mr. Chairman: We will be making a lot of distinctions of that type as we go through this.

Mr. Brandt: It is sufficient for our requirements on this committee to know that a Quebec company listed on the Montreal Exchange under "Junior Resources," namely, Golden Tiger, does have the right to carry out certain activities in Ontario, which could be relevant to our investigation on this committee. By way of clarification, it is known that Golden Tiger has something of the order of 800 activities being carried out in Ontario by way of exploration or by way of claim to pursue the interests of that company, which is appropriate. I do not think there is anything illegal about that. As Mr. Treleven points out, whether it owns the land or whether it has a claim on the land that it has achieved in a legal sense, it does have activities in Ontario that could be relevant to our pursuits in this committee.

Mr. Chairman: Not to be too much of a purist, but there are those who would argue that a Minister of Northern Development and Mines owning shares in a mining company in any sense of the word, or even members of his family owning shares in a mining company would not be considered proper behaviour. The simple fact that he or an immediate member of his family owned shares in a mine would cause a conflict with the minister of mines.

Mr. Brandt: There are some who might argue that, and I may even be one of them--

Mr. Chairman: I was afraid of that.

Mr. Sterling: One area that concerns me is the ability of mines to develop in Quebec versus Ontario. There is considerable advantage in Quebec under its taxation policies to explore and develop there. Did we get anything on that at all, John?



Mr. Eichmanis: I have an article, exhibit 013, with Mr. Kerrio's picture on the front. There is a comparison between the advantages that are received. There is a paragraph that says, "particularly in Quebec with a tax write-off for each dollar invested in mining exploration of \$1.67 compared to \$1.33 elsewhere." There is a clear advantage to tax write-offs in Quebec as opposed to any other part of the country.

Mr. Sterling: That is the point. I was following along with what the chairman was saying in terms of owning stock in mining companies anywhere in Canada. If you are a minister in this government and you have some influence on taxation policy and the majority of Golden Tiger's activity is in Quebec, then I do not know what conclusions you would draw from the input into the cabinet discussions on mining, especially when you are the mining minister and looked to for leadership in terms of tax incentives. That is the problem you are facing in owning mine stock.

Mr. Martel: There are some tax law changes coming from the Treasurer in the not-too-distant future, if it has not already been introduced. That is the thing that amazed me in the House when the discussion apparently seemed to take the slant that they were discussing tax changes. Does his ownership of that have any influence on the presentation that might be made in terms of what type of tax legislation we should have in the province?

Mr. Sterling: That is exactly what I am saying. That should be done with a clear and open conscience, without any interest bearing on a personal gain that might be made here.

Mr. Laughren: The Mining Act has been introduced.

Mr. Martel: With the tax law change?

Mr. Laughren: No tax law.

Mr. Sterling: Does the taxation matter? It was rumoured that there was consideration in the last budget about a similar type of exploration tax break to the one they have in Quebec. There was speculation within the mining community on that.

Mr. Chairman: The other thing which we will spend some time on in our deliberations through all of this is, was there at any time any intent to do something that was improper. That whole field has to be examined. The second thing which becomes more and more apparent as you go through the documentation is how practical are all of these guidelines and how fervent do you want to be.

To be more specific, when we vote on our own salaries, as we have done for a decade around here, it is clearly a conflict of interest. When we vote on a pension plan for ourselves in this light or in another light, we have a conflict of interest. When we vote for or against any tax measure, we have a conflict of interest. You cannot get carried away with this to wild extremes, because we are elected to do a task which means that when somebody presents a budget to us, the obligation is on us to vote for or against it.

We cannot run out of the chamber and say, "I cannot vote for or against a gas tax because I buy gasoline." We are trying to get into the realm of reality: how practical is it? Was there any intent on anybody's behalf of some wrongdoing? That is what the conflict-of-interest reference will be about.

11:50 a.m.

Ms. Hart: May I have some clarification? Perhaps I am a little slow. Several comments back, someone said there was a point of view that if you were Minister of Northern Development and Mines, you could not hold any mining shares at all. Do I understand correctly that when you run for election, you do not know you are going to be a minister, and even when you are a minister, you do not know what portfolio you are going to have and you may be moved from time to time? Is the thinking that, as you move from ministry to ministry, you must divest yourself of everything and that a blind trust is not good enough?

Mr. Chairman: The discussions here and in other jurisdictions would range to absolute and total divesting of any outside interest at all. I do not know of any jurisdiction that says you have to do this. In practical terms, it is almost impossible to do anyway.

Guidelines such as we have in Ontario would say that under certain conditions you could retain your ownership in stock portfolios but you could not retain control of them any more. You must use some device that allows them to go into someone else's hands. The critical factor in Ontario precedents is that you can still own them but you have to lose control of them. You have to put them in a trusteeship, in escrow. You have to use some legal technique which clearly defines that you no longer control those interests in that company or those stocks.

By and large, that has been our experience here. Other jurisdictions are a little tougher than that. The purest mark would be as blunt that, if you were a minister of the crown and the minister responsible for mines, you could not own, in any sense of the word, any stock in any mining company. It would probably extend to the point where they said no one in your immediate family could either.

Mr. Mancini: Whether or not they were in trust?

Mr. Chairman: Yes. The extreme, purest form would be the argument that you could not possibly do this.

Where we get into the grey areas is about whether the various legal techniques for divesting control are sufficient. Is that enough to do or do you need to go further? How far do you extend that into your family?

One of the problems that we are running into, for instance, is that there are a number of family members involved in this case. Is it sufficient to transfer the ownership of a stock from my name into my son's name? Is that good enough? Does that remove the possible conflict? I am sure we all have different views on this.

Ms. Hart: What jurisdictions require complete divestiture as opposed to blind trust for ministers of the crown?

Mr. Chairman: John, you can help me on this. I do not know of anybody who says you have to divest everything. The American states and the United States federal government are much more into disclosure, but they do not, by and large, require you to get rid of anything. To accept certain positions in certain agencies, they will do that. They will say that if you are taking an appointment to, as an example, some agency which regulates the automotive industry, you cannot be a corporate executive for General Motors. You would have to resign your job to take the appointment. That is as close as it comes.



Ms. Hart: I understand. My narrow question is whether there is a jurisdiction that we know of which requires a complete divestiture by a minister of the crown, in this example, of any shares relating to the portfolio?

Mr. Sterling: I think Alberta has a mandatory--

Mr. Chairman: These are the ones you were given this morning.

Ms. Hart: I have them. I am trying to make it easier for myself.

Mr. Chairman: There is no easy way.

Mr. Brandt: The Senate of Canada requires that any member of the Senate not actively do business with the government of Canada during the time the person sits as a member of the Senate. That is very clear.

Ms. Hart: That is not the same thing at all. I am asking about shares where you are once removed, where there is a corporate entity between you and whatever.

Mr. Brandt: If those shares are placed in a blind trust, it makes it very clear that the senator cannot actively engage in business that would relate to those shares in blind trust while he has the responsibility of a senator. It is not required that they have complete divestiture and that those shares be sold but that they be placed in a blind trust and the activities of that senator be very narrowly defined from that point on, once he accepts the position of a senator.

Mr. Martel: What do they do anyway?

Mr. Brandt: That is another question for another day.

Mr. Martel: They can do anything they want, because they do not do anything in Ottawa.

Mr. Chairman: Perhaps Merike can go through that and give us a shorter summary of all of these. There is one already in the kit.

Mr. Sterling: No, this is mine, but it was in one of the Canadian parliamentary guidelines where there is a comparison. I was reading the restrictions on members, for instance, in Quebec. It says, "Ministers and their families may be required to divest of holdings," etc. In Alberta, it says that members may not own shares in any public companies whose business may be affected by the Alberta government.

Mr. Chairman: The truth is it is very difficult to write this type of thing once you get into the practical aspects of it. For example, when we did the municipal conflict-of-interest legislation, we attempted to be as specific as we could, but we did run into some problems. Some guy in Kitchener lost his seat on the council because he had voted on a street improvement that happened to go by his house.

The practical ramifications of this are a little on the immense side. We can look at other jurisdictions and see how they go about it to compare it with our precedents and practices here to see whether we are being reasonable. From this committee's point of view, the pertinent part here is reasonableness. Was this a reasonable thing to expect from somebody? Did he

encounter problems in getting rid of stocks or problems in trying to set up blind trusts or escrow or whatever.

Our judgement call is on whether the minister in question made the reasonable attempt that is expected of us to avoid a conflict of interest. If he did not, then we would probably say something such as: "He acted improperly. He should have done it." For example, if I came in and sold the assembly 86,000 new Chevrolets, you could make a judgement call on whether that was a reasonable or unreasonable thing to do.

I do not own shares in General Motors. I would not have a vested interest in it and I would not make a profit by it. Obviously, my community would profit and I represent that community. There is a bit of conflict there but I do not think very many people would say--for example, this government and the previous one made several moves to help Windsor when it had problems with its automotive industry but no one got up to claim that Windsor members could not vote or speak on certain matters because there was a conflict.

Ms. Hart: May I lay a question on the table, perhaps for legislative counsel? I have had a chance to have a quick glance at this but it does not really address my question. Is there a jurisdiction in any of these that we are dealing with that requires divestiture by ministers?

Mr. Chairman: Total? I think the short answer to that--

Mr. Treleaven: Take a look at Quebec, just above where Mr. Sterling was reading. It seems to distinguish between corporations on the stock market as compared with others. "Ministers must divest of interest in companies on the stock market." That is down at about the sixth or seventh lines. It goes on to say, "Lesser restrictions on families" and, I would take it, on private corporations and perhaps other public corporations not listed on the stock market. There is an example of a divestiture rule. Again, it is in the Public Service Act. It looks like it is legislation.

You asked a narrow question, "Is there any jurisdiction which requires divestiture?" At a glance, there is one.

Mr. Mancini: Let us find out whether this divestiture means what we think it means.

Mr. Chairman: To be fair and to answer your question a little more directly, we know of no jurisdiction that requires total divestiture. Each jurisdiction that we have looked at, from the information we have provided for you, shows you where other people have drawn the line. Some say you cannot own public corporate stock but you can own private corporations. Some say that prohibition extends only to the member, some say to the member and family, and some say you must be able to establish that there is a clear intent to profit before it will be considered a conflict.

There is ample information about it. Nobody deals in absolutes. Each jurisdiction tries to provide a certain amount of reasonableness and tries to set up its own guidelines.

Mr. Bossy: Yes. It tells me a little bit. We are discussing a lot of matters here that really will come up when the Aird report comes in.

Mr. Chairman: Yes.



12 noon

Mr. Bossy: My perception of what we are dealing with is what is contained in the 1972 or 1985 guidelines, and what Mr. Fontaine might have done to comply with those guidelines. I do not think we need to stray into Quebec or Alberta. It is good information, but I think we need that further down the line.

Mr. Chairman: The other judgement factor involved in this, to use a classic case, if someone challenges a member of the cabinet or a member of the assembly on having a conflict, the normal process in the parliamentary aspect is that the member gets a chance to explain what happened. If the other members accept that explanation, it is considered reasonable. If they do not, then the member has no choice. Whether there is a real or perceived conflict of interest is irrelevant at that point. If the members do not accept the explanation, the traditional thing is that the member resigns.

We have seen an instance here in recent months where a member of the cabinet came in with her explanation and had the chance to make her statement. She looked around the House and it became evident to her that the explanation was not good enough. She then frankly read a brief statement saying: "While this is still in question, I cannot function as a minister. The shared trust I need to do that is not present." You can see that, in the parliamentary sense, very often the facts are irrelevant. You cannot throw them out the window, but the perception by other members of the assembly that it was a reasonable thing to do is equally important.

Mr. Brandt: I want to get back to the conflict-of-interest guidelines again. I think Mr. Bossy's point is a very good one, because that is really what we are dealing with, the 1972 and the 1985 guidelines. However, both contain the same catch-all paragraph, which talks about the behaviour in a very general sense of members and indicates the very difficult situation that faces any cabinet minister or member of the Legislature, for that matter, with regard to conflict of interest and how that may be specifically applied in particular cases.

I think there is a very clear distinction. You use the example of the General Motors sale of cars and how that might benefit your community. In a very extreme case, someone might say, "Mr. Breaugh benefited from that transaction." In the municipal conflict-of-interest guidelines and in others, the position has always been taken that you can have a conflict in common with a large group of people. To give an example, if you were sitting in the Legislative Assembly and a budget came forward which called for a tax reduction--it will probably never happen in our lifetime, but let us say in the assembly we reduced the sales tax from seven per cent to six per cent. Every member of the assembly would benefit from that but clearly would not have a conflict, in that nine million other people benefited as well from that reduction in the sales tax.

There is a conflict in common, which I think we have to set aside in the interest of goodwill on this committee. If the member does have a conflict in common, I have no problem with that kind of thing at all. Where I do have a problem is where the member in question has a conflict specifically related to that member's activities. That is a distinction which I think is covered both by the guidelines and by the relevant paragraph which follows in the documents of 1972 and 1985, where they clarify that there is a behaviour pattern that is incumbent upon all members of the executive council to follow.

Mr. Chairman: Both sets of guidelines attempt to address that point.

Mr. Martel: Mr. Laughren says legislation has been introduced by--

Mr. Chairman: The Mining Act.

Mr. Martel: Yes. Might I ask legal counsel to look at the bill to determine if there is anything in there that would deal with the subject Mr. Martin was supposed to have talked to the minister about, the changing of taxes or anything? I would like to have it clarified for my own peace of mind that there is nothing in there at all. Maybe legal counsel could look that up for us.

Mr. Chairman: This might be an appropriate time to break, but I would like to give you the chance: Is there anything you want done over the noon hour, any information or things such as that?

Mr. Sterling: If Mr. Eichmanis is going to be talking to the Premier's office, there was a private inquiry set up by the Premier to look into the forest management agreement with Hearst Forest Management. I do not know very much about who the members of that are. Are we going to go through that documentation this afternoon?

Mr. Chairman: This afternoon.

Mr. Sterling: That will be my question. If it is answered, that is fine and dandy. I would like to know the structure of it, the timing, when it is going to report and who the people are who are involved in it.

Mr. Chairman: We are scheduled to go through that information this afternoon. We will have a witness available if you want to talk to him about it.

If you wish, you can leave your documentation here and we will secure the room. We will stand adjourned until 2 p.m.

The committee recessed at 12:07 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

MONDAY, JULY 21, 1986

Afternoon Sitting





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Laughren, F. (Nickel Belt NDP)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Brandt, A. S. (Sarnia PC) for Mr. Johnson

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Turner

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Natural Resources:

Tworzyanski, T. J., Acting Supervisor, Management Planning Section, Timber  
Sales Branch, Forest Resources Group

Markus, E., Director, Timber Sales

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, July 21, 1986

The committee resumed at 2:17 p.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST: RENE FONTAINE  
(continued)

Mr. Chairman: This afternoon we have people available from the Ministry of Natural Resources, if the committee wants to hear from them on the forest management material it has. I take it you indicated you wanted a briefing on that.

Is it the committee's pleasure that we hear from Tom Tworzyanski and that he take us through that forest management stuff? Can you come up to the microphone?

Mr. Treleavan: He can perhaps synopsise this for us in the first 60 seconds.

Mr. Chairman: Do you have other people with you that you would like to bring up with you?

Mr. Tworzyanski: Yes, I do.

Mr. Chairman: This is essentially a briefing session for the committee. Do you have any thing to start this process, or do you want to make a statement? Then I will let the members ask questions.

Mr. Tworzyanski: There is a summary within the thin binder you have. I can direct you to that. It is probably in your kit. It is a very thin one.

Clerk of the Committee: It is within the thick binder.

Mr. Martel: Within the first one.

Mr. Tworzyanski: I am not familiar with your binders. We submitted one copy of the complete file to the committee and I assume the clerk made copies for everyone.

Mr. Chairman: We have copies; finding them is another matter.

Mr. Eichmanis: It is 2/015, and it is about the third piece of paper in. It is on a side like this. A letter from Mary Mogford to the chairman begins it.

Mr. Chairman: Let us take a moment while we delve through the portfolios.

Mr. Eichmanis: That document is the letter from the deputy minister to the chairman.

Mr. Tworzyanski: Are you referring to your own summary?



Mr. Eichmanis: No. It says, "Summary of Hearst FMA, Open House Comments." Is that not it?

Mr. Tworzyanski: I assume those are summaries your researchers made.

Mr. Eichmanis: No, I am talking about your summaries. Are those the ones?

Mr. Tworzyanski: No. Perhaps I can come up and show you.

Mr. Eichmanis: I am sorry. I thought that was it.

Mr. Treleaven: It is the clerk's fault. She should have numbered all this by hand before or after photocopying.

Mr. Eichmanis: I am sorry. I misled the committee. It is a smaller, stapled package, and the first page is dated July 7, 1986.

Mr. Martel: In what package?

Mr. Laughren: In what did it come to us?

Clerk of the Committee: Volume 3.

Mr. Martel: In volume 3.

Mr. Treleaven: Second pile down.

Mr. Chairman: At the top of the pile, you will find this package dated July 7. Do not fear. The staff members of the committee are now going around and they will point in the appropriate direction. Committee members will eventually have the documents placed in their hands.

Mr. Martel: May I ask who helped the chairman to find his?

Mr. Chairman: The clerk of the committee.

Mr. Martel: Have that noted on the record. The chairman could not find his either.

Mr. Treleaven: With adult supervision, we will do all right.

Mr. Chairman: That is why I have a clerk. I am no fool.

Mr. Tworzyanski: Approximately 20 pages from the bottom is a summary. That was made up at a variety of times for a variety of purposes. It summarizes the major events in the negotiations that dealt with this particular forest management agreement.

Mr. Laughren: It is the background on the FMA?

Mr. Tworzyanski: That is correct.

Mr. Chairman: One moment. Has everyone got the document in his hands? You are all looking very wise. That is usually a bad sign. Where did you want to start in this document?

Mr. Tworzyanski: I will start at the top and work down to bring you to where the activities that we undertook--

Mr. Eichmanis: Before you start, can you identify approximately the beginning of the document you are referring to now? You said 20 pages in from the back?

Mr. Tworzyanski: It is approximately 20 pages from the back. It is an item labelled Background on FMA with Hearst Forest Management Inc.

Mr. Chairman: Let us try to find that.

Mr. Martel: The minister at the time was Mr. Pope. Is that correct?

Mr. Tworzyanski: That is correct.

Mr. Mancini: Let us have that heading again, please.

Mr. Chairman: It is unfortunate there is not a page number on it.

Mr. Tworzyanski: No, there is not.

Mr. Chairman: The subject is called Background on FMA with Hearst Forest Management Inc.

Ms. Hart: May we have the pages numbered? Otherwise, we are never going to be able to find these things.

Mr. Chairman: I agree. We will have to find a better identification system, or more clerks.

Mr. Mancini: That was a serious point that you made.

Mr. Chairman: Yes. I am sure a good, high-priced, Bay Street lawyer would help you find the page a lot faster. I apologize. Even the member for Oxford (Mr. Treleaven) found the page. Lawyers are not totally useless.

Mr. Tworzyanski: The inception of this FMA started about February 21, 1983, in Timmins at a news conference with the minister of the day, Mr. Pope, who indicated that he would consider forest management agreements of a co-operative nature. He mentioned Hearst by name at that news conference.

Mr. Mancini: Can we ask questions as we go along, please?

Mr. Chairman: I am reluctant to start that, but let us try one and see how much trouble we get into.

Mr. Mancini: I see the document says February 21, 1983, and you state that the minister had a press conference. How long had negotiations or discussions taken place within the ministry before the public announcement? That is the first question. Second, is Timmins in Mr. Pope's riding?

Mr. Brandt: Yes, it is in Cochrane South.

Mr. Mancini: Will you answer my first question?

Mr. Tworzyanski: There were no negotiations whatsoever prior to that date.



Mr. Mancini: I am not asking about negotiations; I am asking about discussions within the ministry. Were there discussions among yourselves, the three gentlemen before us here today or other officials in the ministry before the minister made his public statement? I do not think the minister got up one morning and decided to make a statement. There must have been discussions, advice, counter-advice and that type of thing. I would like to know how long that took place.

Mr. Treleaven: I think the member for Essex South (Mr. Mancini) is dealing with these people as witnesses. I did not think they are actually witnesses.

Mr. Chairman: They were invited here this afternoon to give us some background information on the FMA. Within the realm of discussion in the committee, if we want them recalled as witnesses, that is fine; I have no problem with that, but they were invited here this afternoon--

Mr. Mancini: If it is a problem, I will withdraw the question.

Mr. Tworzyanski: Perhaps I can outline the activities that occurred, leading to the actual negotiations with the company in terms of the forest management agreement, and then questions might fall in a little better.

The initial overture regarding co-operative forest management agreements was made in the press. I believe that was followed up by a statement in the Legislature by Mr. Pope very shortly afterwards. On June 13, 1984, there was a letter from Mr. Pope to Mr. Armson, the executive co-ordinator of the forest resources group, indicating that the group should explore the development of forest management agreements with people in the Hearst area. A copy of that is the first letter in the file, which is deep in your documents.

Following that, a number of introductory meetings were held with the operators in the Hearst area. These are essentially a standard type of meeting we conduct out of main office to acquaint people or parties interested in forest management agreements with the process, the responsibilities, the mechanics, the content of the agreement and so on.

Following that, there were three companies that indicated they would be interested in carrying on the co-operative. We commenced to have discussions of a general nature to start, and they became more specific as the agreement developed.

2:30 p.m.

To make a long story short, the development of the agreement culminated recently, between September and November 1985. That is when the content of an agreement was finalized. That was presented to an open house in December 1985, and the rest is what you gentlemen are recently familiar with; they did not concern the development of this agreement.

That is a very short version. Perhaps some questions can shed some light on other issues you want to address.

Mr. Chairman: Will you introduce the other two gentlemen you have with you?

Mr. Tworzyanski: Yes. The gentleman on my right is Mr. Markus, the director of the timber sales branch. The other gentleman is Louis Low, from our legal services people.

Mr. Mancini: I want to go back to where you state there were three companies interested in the forest management agreement. Is that correct?

Mr. Tworzyanski: That is correct.

Mr. Mancini: Are those companies listed anywhere?

Mr. Tworzyanski: Do you mean within the document?

Mr. Mancini: Yes.

Mr. Tworzyanski: Yes, they are.

Mr. Mancini: Is it in the shortened version you gave us, or do we have to look for them?

Mr. Tworzyanski: No, they are listed in the document.

Mr. Mancini: Do you recall who they are?

Mr. Tworzyanski: Yes. They are United Sawmill, Levesque Lumber and Lecours Lumber. They appear in that summary under October 5 and 9, where it indicates that letters from those companies came to Mr. Pope at the time, indicating they were interested in developing a co-operative forest management agreement.

Mr. Mancini: Were you the main player in all these negotiations? Did you look at these letters, advise the minister or things of that nature? I am trying to find out exactly where you fit in.

Mr. Tworzyanski: At the time, I was the forest management agreement co-ordinator. I am currently acting supervisor for forest management planning and still tapering off on the forest management agreement duties. At that time, I would look at this material or provide advice through the director of timber sales and through the executive co-ordinator of the forest resources group, which would eventually end up with the minister or the deputy, as was appropriate.

Mr. Brandt: Could you take us through the FMA process for a moment? Obviously, the application we are referring to in this documentation is still before cabinet and the decision has not been made. I think we are aware of that.

On the heels of Mr. Mancini's questions, is it not correct that of the three initial applications, they have now been reduced to two? Have Lecours and United Sawmill not joined forces with respect to their application?

Mr. Tworzyanski: Yes. However, the third party, Levesque, also recently indicated that it now wishes to be involved again. A lot of the documentation deals with that process. We started with three, went down to two and went back to three.

Mr. Brandt: Do you have three separate applications for an FMA in that area, or are there companies that have co-ordinated their efforts, either in concert with United Sawmill or whomever? What applications do you have before you now?



Mr. Tworzyanski: Initially, when the process started, we had three applications of a united nature, indicating they wished to participate in a co-operative. Shortly following, there was a dissension of one of the principals, Levesque specifically, indicating it wanted its own forest management agreement, which left us with two applications. Then, to wrap up, more recently, Levesque agreed to co-operate with the other three; so we would be back to three again.

However, the agreement was developed with two companies. Hearst Forest Management Inc. is made up of two companies at present. That is where it stands now.

Mr. Brandt: For the record, those companies are United Sawmill and Lecours.

Mr. Tworzyanski: That is correct.

Mr. Brandt: Can you give us some indication of the length of time an FMA will be in actual use by the successful applicant? My understanding is that you are entering into a 20-year agreement.

Mr. Tworzyanski: Yes.

Mr. Brandt: Can you explain the renewable aspects of that 20-year agreement and how far in perpetuity is it possible for that agreement to extend?

Mr. Tworzyanski: The agreement is called an evergreen agreement. That means it starts with a 20-year life. Every five years a review is carried out, as was tabled in the Legislature last year. Based on the results of that review, if it is satisfactory, the agreement is extended for another five years. Essentially, you get an agreement that starts with off with 20 years, goes down to 15, and if there is a satisfactory performance, then the agreement goes back again to 20. However, if there is not satisfactory performance the agreement stays at 15 until reparative action takes place or whatever appropriate conditions are met to allow that agreement to be extended for another five years.

Mr. Brandt: If one were to assume an acceptable arrangement between the Ministry of Natural Resources, within the context of the FMA, and whatever the successful company might happen to be, would this agreement be in perpetuity?

Mr. Tworzyanski: It could be if there was agreement between both parties.

Mr. Brandt: In other words, it would be automatically renewable unless there was a breakdown in performance?

Mr. Tworzyanski: Yes, that is correct.

Mr. Brandt: If the silviculture program, reforestation or whatever else was required, was not carried out, the agreement could be broken?

Mr. Tworzyanski: Yes, that is correct.

Mr. Brandt: Assuming that all the terms of the agreement were complied with, then the agreement would or could be renewable automatically after five years, ostensibly for ever?

Mr. Tworzyanski: Yes, a renewal every five years.

Mr. Brandt: Can you give us an indication of the acreage involved in the FMA?

Mr. Tworzyanski: I believe it is approximately 10,000 hectares, which is roughly 24,600 acres. There are about 42,000 acres.

Mr. Brandt: Are you able to put an evaluation on the timber on that acreage? In very general terms, can you give an evaluation of what that might be worth? If you were to cut the entire 42,000 acres, do you have any idea of what that might be worth?

Mr. Markus: You do not put a value on timber as to what it is worth.

Mr. Brandt: You have no idea.

Mr. Markus: We could take a wild guess, but our job is not to estimate the value.

Mr. Brandt: No, I would not want you to stick your neck out and take a wild guess. There have been some numbers reported relevant to the cost of engaging in an FMA. Some suggestion has been made that those costs could be as high as \$300,000 on the expense side of the ledger.

Obviously, on the expense side of the ledger, there has to be a concurrent asset that one would pick up. I would expect that someone could make a guesstimate as to what that asset would be worth. You do not put \$300,000 into a business, and I would presume this would be the startup cost of whatever would be required in undertaking the responsibilities of an FMA. Balanced against that, what is the revenue, or the projected revenue, that one might anticipate? You do not operate the business, so I do not expect you would know an exact number, but is there any formula that can put a price on that?

Mr. Markus: I do not know.

Mr. Brandt: I would guess, as someone who has had some limited experience in business, it would have to be something in excess of \$300,000. You would not bet \$300,000 against the loss.

Mr. Markus: Can we speak to the expense side perhaps first?

Mr. Brandt: Yes.

Mr. Markus: The expenses incurred are for two main reasons. One is forest renewal work. It is paying the FMA holder to do the whole array of forest renewal work, such as site preparation, planting, tending, etc. The other cost is a road subsidy. The road subsidy, or assistance funding if you wish, is provided for two main reasons. For any forest renewal work that is done as a matter of modifying the cutting, no payment is given to the FMA holder for that. For instance, if one modifies the harvesting methods, cutting one strip in three or something similar, the main cost in that type of



treatment is extra roads. Therefore, by assisting the road construction of an FMA holder, we pay no money for any forest renewal work associated with modified harvest cutting.

2:40 p.m.

The other is that in the FMA we have the principle called "oldest first." We believe it is good forest management basically to cut the oldest forest first. In many cases, this may mean more roads than are normally built. The road assistance money is given for those two reasons. Those are the two expenses in a forest management agreement.

What do we get as a government from that? First, they are doing the forest renewal work we would normally do. If we pay an FMA holder \$500,000 a year to do forest renewal work, he is doing that, in effect, on our behalf as per the agreement. We would have to pay for that anyway, because the costs agreed upon are average Ministry of Natural Resources costs.

We do not go much beyond that by trying to put a value on what the forest products produce in the marketplace. We are concerned with continuity of supply and, in this case, the future of the community. This is what they are living on. I do not know whether that explains it.

Mr. Brandt: I can see we are going to have a problem getting to a number. Is it fair to say that the intense competition related to an FMA indicates that there is an asset in acquiring an FMA and that, otherwise, people would not be making application to acquire one?

Mr. Tworzyanski: Perhaps I can lead into that a little. An FMA essentially replaces a licence or a series of licences that the resultant FMA holder either held or was party to. There is no assignment of new areas. I cannot recall any assignment of new areas in 26 FMAs to people who were not originally operating those areas or did not hold those areas with licences prior to the FMA.

Mr. Markus: Except for minor area adjustments

Mr. Tworzyanski: Except for minor area adjustments or that type of thing.

Mr. Brandt: Are they all the same companies or perhaps companies that may now be defunct or that have been rolled into another company?

Mr. Tworzyanski: There are no FMAs as a result of defunct companies. There are two transfers of FMAs to other companies, the parent companies still being in existence. No FMAs have terminated because of a company being bankrupt, defunct or no longer existing.

Mr. Markus: I have a map here. You can make copies, if you wish. You may want to pass it around. It shows the crown management units and the proposed FMA boundary in the area under consideration.

The point Mr. Tworzyanski was trying to make is that, except for a few minor adjustments, the original area on which these three sawmills are dependent for wood supply is basically the FMA area. I thought you would be interested in this.

Mr. Chairman: Perhaps Ms. Mellor can put that up on the wall over there for us.

Mr. Laughren: May I ask a question?

Mr. Chairman: Yes, but just hold on for a second. It would help me a little if you would let me go through the list.

Mr. O'Connor: I have a slightly different area of concern. This summary indicates activity, negotiations, discussions and letters back and forth by numerous participants during about three years. I do not see it in here. Were there meetings with the participants from time to time, as well as correspondence back and forth?

Mr. Tworzyanski: Yes, the minutes of the meetings are within the filed documents.

Mr. O'Connor: They are here somewhere?

Mr. Tworzyanski: That is correct.

Mr. O'Connor: Do you recall who represented United Sawmill and attended the meetings?

Mr. Tworzyanski: Up until January 9, 1985, I believe Mr. Fontaine and Roland Cloutier represented United Sawmill. The next meeting was on June 24, 1985. Mr. Fontaine was not present at that meeting or any subsequent meetings following that day.

Mr. O'Connor: Do you recall how many meetings there had been up to January 1985 at which he was present?

Mr. Tworzyanski: I would have to go through the file. I suggest probably about three or four. Is that about right?

Mr. Markus: Three to five.

Mr. Tworzyanski: To be safer, three to five. That would include the introductory meeting, which was quite informal, and then some slightly more formal meetings as we went along.

Mr. O'Connor: It appears that on November 26, 1985, Levesque dropped out of the beginnings of the agreement whereby the three were to be involved as one partnership. Is that correct?

Mr. Tworzyanski: That is right. November 26 is when he indicated in the letter. There are meeting minutes in the file that reflect that situation.

Mr. O'Connor: What was the ministry's attitude about his wanting to drop out? I take it that it wished for co-operation among the three companies, wanted him back in the group and promoted his being back in the group. Is that correct?

Mr. Tworzyanski: That is correct.

Mr. O'Connor: The ministry sent a number of letters and held meetings to promote that. What was his difficulty? Why did he not want to be included?



Mr. Markus: I will try to recall some of his comments. First, he felt that the three companies were basically in competition with one another in the marketplace, i.e., they were all producing lumber. He did not feel that three companies in this position could--

Mr. Mancini: I am sorry, I cannot hear what you are saying, sir.

Mr. Markus: I will try to recall the concerns of Mr. Levesque. One was that there were three companies proposed for this forest management agreement that were all in the same business, i.e., producing lumber. He did not feel that three companies competing with one another in the marketplace could co-operate efficiently or fully, however you want to put it.

Mr. Martel: There is a really creative idea.

Mr. Markus: Second, he had some concern about the area he was operating in being historically heavily budworm-infested. He felt that if he went into a co-operative FMA, the flexibility to adjust his cutting areas from the budworm-infested areas to those that were not as badly damaged by the budworm would be hindered. We did not believe this to be the case and told him that.

Those are the two main reasons that I can recall, sir, for his not wishing to participate.

Mr. O'Connor: What was it that changed his mind and got him back into the deal?

Mr. Chairman: I am going to stop you there. I am feeling a little uneasy that we are asking someone to give somebody else's reasons for why they were in or out of a deal. I do not think the witness is really qualified to speak to that.

I cautioned you initially about getting into this kind of detail. I think you are going to have a problem. If this is a briefing by ministry staff of the sequence of events up until now, I think we are fine this afternoon. If we want to know why a particular company did something, the proper route is to put a motion to call that company before the committee and let it speak for itself.

Mr. O'Connor: The gentleman was quite forthright and sure about why Mr. Levesque had difficulty carrying on with the transaction.

Mr. Chairman: My problem is that I am not so sure Mr. Levesque would be that forthright. If you want to ask him, fine. Do not ask me why Mr. Mancini does something; ask Mr. Mancini. If you want to hear that, call him in and we will ask him.

Mr. Markus: There is a letter on file from him.

Mr. Mancini: I do not think this is any more relevant than the questions I was going to ask.

Mr. O'Connor: We were presented with all this material over the lunch hour, and there may well be explanations for it in there. If they are at the witness's fingertips, he may be able to direct us to them or summarize them, as he has just indicated there is a letter explaining Mr. Levesque's intentions.

Mr. Chairman: I prefer that route this afternoon. If there is a letter, tell us. If there is a document to which you want to direct our attention, do that. I do not think it is reasonable to proceed with a witness before a committee telling us why some company did something.

Mr. O'Connor: Is there a letter indicating Mr. Levesque's intentions?

Mr. Markus: There is.

Mr. O'Connor: Is there a subsequent letter indicating why he is now satisfied with being part of the group?

Mr. Markus: There are minutes of meetings, particularly of a specific meeting at which the whole issue of his coming back into the fold was discussed. Subsequent to that meeting, there are letters resulting from that wherein Mr. Levesque indicated he did want to come back into the co-operative FMA. They are in the file.

Mr. O'Connor: Perhaps I can jump ahead and ask you where the situation stands now. There has been an indication that the agreement has not been approved by cabinet. The FMA has not been granted to the Hearst Forest Management group. Is that correct?

Mr. Markus: That is my information.

Mr. O'Connor: There seems to be an unsigned draft letter from Mr. Kerrio--

Mr. Markus: Yes.

Mr. O'Connor: --in which he indicates, although it is a draft letter and is not signed, that the agreement was going to be approved.

Mr. Markus: We are trying to be good civil servants and have everything all ready for when it is signed.

Mr. Tworzyanski: Maybe the notation on the front of the letter below that, where it says hold--

Mr. O'Connor: He asked to hold until June 25.

2:50 p.m.

Mr. Tworzyanski: Yes. There was a cabinet meeting on June 25 and the item was deferred indefinitely.

Mr. O'Connor: It states, "Hold till I chat with Don on June 25."

Mr. Tworzyanski: That is correct. If you will notice this notation, it says, "Now what?" on the bottom of the little--

Mr. O'Connor: "Now what?"

Mr. Tworzyanski: That is our question. The matter was deferred from cabinet at that time and this is the result.

Mr. O'Connor: The matter is still in limbo.



Mr. Laughren: It is important that we have a clear understanding about the value of FMAs. That is underlying a lot of the questioning. To what extent is an FMA an asset or of value to a company that signs it? I suspect that is where the members are coming from. Am I correct in my assumption that an FMA is a valuable document for a company to have in view of the fact that it guarantees to a certain extent tenure and supply and that it also provides money for roads?

I was squirming when you were giving your explanation of the road subsidies. These roads have to be built anyway. They were built before there were road subsidies. That is a very substantial subsidy. If you look at the expenditures under forest management in the Ministry of Natural Resources estimates every year, you will see how they skyrocketed in the past five years. The value of the FMAs to a company should be made clear to the committee. I assume the Minister of Natural Resources (Mr. Kerrio) will not dispute the fact that they are valuable documents to the companies involved. Am I correct in that assumption?

Mr. Tworzyanski: I agree that the tenure of the FMA does provide a certain value or security to the company. If I can speak to the funding aspect very briefly, depending on the type of working arrangements that a company has under union agreements and so on, the company usually has to add between, let us say very reasonably, 20 per cent and 30 per cent towards the silvicultural end of the money that the ministry is paying out, the premise being that the ministry pays only its own equivalent costs of carrying out silvicultural work.

The road aspect has been reduced substantially from the initial FMAs back in 1979-80, when the issue of providing partial funding for roads and paying for silviculture was the premise under which the FMAs were developed. The emphasis on secondary roads has been backed off substantially and, in fact, we are only paying 50 per cent of that subsidy at present. I should not use the word "subsidy." I should speak of it as a partial payment in view of some other matters.

To expand a little on the partial payment, as Mr. Markus indicated, you are correct. The roads have to be built anyway, but under the agreement, some of the roads are for silvicultural purposes also. This is money that the ministry had to spend previously. The premise of oldest first or accessing the resource to its fullest requires more roads than may normally have been built by companies under the normal form of operations.

Mr. Laughren: I think you have supported my assumption. I want to make it very clear that it is a benefit to member companies in an FMA, whether it is a single company or a group of companies as in this case. I am sure you noticed, since you put it together, the enthusiastic support for the FMAs by United Sawmill and by Lecours when the co-operative FMA was proposed. I agree with that. I am not quarrelling with it. I do not blame them. I would too. I really want it to be clear that the FMAs are of benefit to the companies that sign them.

Mr. Tworzyanski: The security of tenure in that area is a very overriding issue.

Mr. Martel: I would like to question a little further because I would like to get a handle on the kind of money we are talking about. You pay 50 per cent road subsidy. Is that right?

Mr. Tworzyanski: Not exactly.

Mr. Martel: How much?

Mr. Tworzyanski: I will give you the numbers. That is easier. We pay \$45,000 for each kilometre of primary road constructed. Our definition of primary road is a two-lane road, all-weather access, with a life of about 10 years. We pay \$12,000 a kilometre of secondary road, which is single-lane almost all-weather access. That is a lay interpretation.

Mr. Martel: In the silviculture end we are talking of, how much is being paid by the province?

Mr. Tworzyanski: It is the equivalent of the province's cost to implement that work, which is substantially less than it normally costs a company under union agreement to implement the same work.

Mr. Markus: We took our actual costs across the province, a whole array of forest renewal work, and struck a per unit rate for site preparation, that is, preparing a site before planting, for various kinds of planting, be it container or bare root, and for tending work and said, "That is the price we are going to pay you fellows."

Mr. Martel: You have that--

Mr. Markus: There was no negotiation on that.

Mr. Martel: Okay, but what is that figure per unit? How much are we talking about, that the province pays?

Mr. Tworzyanski: Without rhyming numbers off the top of my head, I believe you have a copy of a draft agreement also in your file. In the back of that is an item called schedule D or E, which lists the prices on a per unit basis that a company would get paid. Each agreement has that.

Mr. Martel: Let me ask you if you can tell me--and this is straight factual information--what amount of money the province would have put in to the forest management agreement before us? I think Mr. Brandt used the figure that somebody was going to put up \$300,000. Was that all company money or was that the value of the work?

Mr. Tworzyanski: I do not know about the \$300,000 figure. My interpretation of that was it was what the co-operative had put up to become organized and get ready to take on the task. Would that be the number you were giving?

Mr. Brandt: I am going on a newspaper account, which indicated that the expense to United Sawmill would go from \$30,000 to about \$300,000.

Mr. Tworzyanski: You are talking about the area charge. Prior to having an FMA, each of the three companies would be licensed on enough area to operate for one year or maybe up to five years. They would have a security of tenure for only a five-year period. They would then have to come back and be relicensed. The cost of holding that licence would have been about \$30,000.

Under an FMA, the company which holds the forest management agreement pays a fee for the full area, based on an area basis, which is about \$350,000 for this whole FMA. That is an annual charge they pay. That is the increase to the company. They are going from paying \$30,000 for short-term licences on a



one-year to five-year basis to \$350,000 approximately to be able to hold this area for the period of 20 years, according to the agreement conditions. That is what those numbers pertain to.

Mr. Martel: I am still mixed up then. I am trying to get a handle on how much, under this forest management agreement, was the value of the provincial share towards that? You must have figured that over--

Mr. Tworzyanski: The provincial share in the first year was, I believe, going to be approximately \$2.8 million.

Mr. Martel: For one year.

Mr. Tworzyanski: That is correct.

Mr. Martel: Do you calculate it for five years or one year?

Mr. Tworzyanski: That is for one year. Over the life of the agreement, I think the press was reporting about \$20 million.

Mr. Martel: That would have been the province's share for 20 years for this forest management agreement?

Mr. Tworzyanski: No.

Mr. Martel: No. I am trying to get it all straight.

3 p.m.

Mr. Tworzyanski: Agreements are renegotiated every five years. Therefore, there is fluctuation in the prices or items covered. As you go into developing an area, depending on how many roads were in it to start with, the road package tends to taper off after five or 10 years.

For example, an agreement that we signed with Great Lakes Forest Products in Thunder Bay last Thursday had a negligible amount of money in the roads package because that area has been in operation for a long time. That is a very low-cost agreement. In area, this one will probably be one of the largest in the province, as will the volume that will be coming from it. It is not totally accessed; hence, it will carry a higher package for roads.

Mr. Martel: I am trying to find out the value of that.

Mr. Treleaven: Schedule D, to which the witness referred--I dug it out--on page 22, the second last thing in the big bundles, lists in column 1 the treatment and in column 2 the rate, and it goes down so much per hectare or so much per thousand of nursery stock. I can understand the gentleman's problem with a net figure because it is for so much a hectare for aircraft and so on. It is many thousands of dollars when one is talking about those numbers of hectares or acres.

Mr. Martel: I am trying to get a rough ball-park figure of the value of a forest management agreement to the holder in terms of assistance from the province. That indicates the value of getting the agreement. It goes along with what Floyd is talking about. I am trying to take it a step further to see what the province is committed to, for example, in the first five years and so on. I want to know the value.

Mr. Tworzyanski: We have a commitment--I believe this was before estimates--for which the first year is \$2.8 million. We had \$3.5 million for two FMAs. This one has \$2.8 million and the Great Lakes FMA has \$0.7 million.

Mr. Martel: It is \$2.8 million for one year?

Mr. Tworzyanski: That is correct.

Mr. Martel: Then it is tremendously worth while getting your hands or your meat-hooks on an FMA.

Mr. Markus: Truly, to get the figure you want, Mr. Martel, you would have to take the moneys expended on forest renewal, which would be \$1 million, for example, and try to make some estimate of the fact that the company would be throwing in another \$300,000 to \$400,000 of its own money out of pocket to do that forest renewal work. Then you would have to take the roads part and say: "We have spent so much on roads, but what did the crown get for that road construction assistance funding? We got some more forest renewal work in the form of modified harvest cutting." We would have to make some sort of a guess as to what the heck that is worth. We can try to simplify it by not trying to do that for any activity associated with harvest cutting modifications. If you could get the two figures on those two sides, in one case subtract one and in the other case add the other, you would get your figure. We have never ever done that. That is why we are having difficulty with giving you that figure.

Mr. Martel: You mean to say that the province is giving money away like that not knowing the value or the return on the type of money it is putting out?

Mr. Tworzyanski: No. I think we have missed a step here.

Mr. Martel: Okay.

Mr. Tworzyanski: I am sure we would all be lining up.

Prior to an FMA being formed with any company, the province pays for and does the silviculture work. We hire people to do that. We also build some roads and we contract people to build the road for us. Under a forest management agreement, that same type of funding transfer takes place except that there are some additional responsibilities on the agreement holder. The agreement holder becomes a contractor for the ministry to carry out that regeneration work. He must now ensure that the regeneration work is done, and we have the unit price structure for that. As Mr. Markus said, normally, the agreement holder has to pay on top of that.

For the roads portion, the agreement holder also has some responsibilities to construct roads to a particular standard and to maintain roads available to the public, and some of the modification of harvest, the access to areas to which we may not have asked to have access through the planning process. That has to take place now. A lot of money is coming in; a lot of money is going back into the economy to produce that work. That is the intent.

One of the premises under which a forest management agreement is developed or looked at is that the company holding it cannot make money from government funding. We are reasonably sure that one cannot make money from an FMA. This is essentially the way to do business in Ontario at this time, if you wish to have a licence.



Mr. Martel: It would depend on where the roads go. You build a road where you want it; then it improves your return. One of the key problems confronting Ontario in the whole field of forestry is that too many of the holdings are too far apart. You are checkerboarding and jumping over properties to get at other properties, and somebody is in between. Quebec rationalized that some years ago; we did not. Is that not part of our problem?

Mr. Tworzyanski: You are digressing a little bit into the forest management planning process, which in the past few years has become extremely tight because of the Environmental Assessment Act and the fact that the ministry provided a class environment assessment to the Ministry of the Environment last December. The planning process complies with those items. It has become very involved, and there are a number of clearing points throughout the planning process before you can actually build a road or harvest a tree.

Mr. Martel: Okay. With reference to your statement that you do not make money, I understand what you are saying is that you do not make money on the money that is given to you; you have to spend it all and so on. However, it does increase. The figure and the point I am driving at is that the forest management agreement is a tremendous tool in the hands of someone holding it in terms of how he plans his cutting and so on.

Mr. Tworzyanski: It ties it down and actually makes the responsibility part of that agreement.

Mr. Martel: I understand it enhances the value of the cutting operation of anyone holding it. I am simply trying to get a figure. You say \$2.8 million for the first year, most or all of which will be spent and supervised, I hope. I am trying to find out how valuable that agreement is in terms of input by the province. If I had a licence and I wanted to improve it, one of the best ways would be to hold a forest management agreement.

Mr. Tworzyanski: It could be.

Mr. Martel: That is very significant then to me as the licensee.

Mr. Tworzyanski: It would be very significant to a licence holder to have some security. That is correct.

Mr. Martel: Gaining an FMA is very important--darnably important--to the long-term life of your company--the planning, how you cut and so on--and the amount the province pumps in is pretty significant in making it work.

Mr. Brandt: May I ask a supplementary on the flip side of that? If one or two of the three companies are not successful in gaining the FMA, are they out of business?

Mr. Tworzyanski: No.

Mr. Brandt: What do they cut at that point?

Mr. Tworzyanski: One of the premises is that all wood commitments on that particular area prior to an FMA coming into existence are maintained. Any prior supply commitments to another party on that area, be he part of that co-operative or part of another group of people deriving wood supplies off that area, must be maintained.

Mr. Martel: May I finish then? It went from three companies to two companies and back to three. Did that cause part of the delay in reaching a conclusion to this situation? Second, after the change of government, did normal negotiations continue?

Mr. Tworzyanski: Yes, to both questions.

3:10 p.m.

Mr. Treleaven: Supplementary to that, exhibit 2/015A lists four companies. You did not mention Custom Sawmills (Hearst) Ltd. Lecours Lumber Co. Ltd., Levesque Plywood Ltd., United Sawmill Ltd. and Customs Sawmills (Hearst) Ltd. are in the draft agreement.

Mr. Tworzyanski: The agreement states that those particular companies will derive wood supplies from the forest management agreement area. Two of those companies are essentially related or are the same person, but carry out harvesting for different products. It is very difficult without dealing with the people involved. Rather than name people, the agreement names particular manufacturing plants in that area.

Mr. Treleaven: Corporations.

Mr. Tworzyanski: Yes, corporations. There are a number of other smaller companies that are spinoffs for a variety of reasons that are associated with those, which it is rather difficult to get into.

Mr. Markus: May I clarify a comment made by Tom to Mr. Martel? It is three, two, three as far as participating companies are concerned. It is not quite three yet. It is going to be the present draft agreement that we are awaiting approval for of Hearst Forest Management Inc. It was two companies, Lecours and United. We have, however, a letter from Hearst that says it will accept Levesque at some period of time, and we will specify this after the agreement is signed. We have a letter from Levesque saying, "I want back in the FMA." That is just a small point of clarification so that you are not jumping on it later.

Mr. Sterling: You said this FMA is going to cost \$2.8 million for the first year. You also stated this is renegotiated every five years. What is it going to cost in the second, third, fourth and fifth years?

Mr. Tworzyanski: I cannot presume what type of funding the government will flow through that period. We had estimates a long time ago and we are nowhere close to even reaching those estimates. It is essentially every five years. It is almost every year, but generally we figure that every five years when an agreement is renegotiated, new commissions to management, new terms of reference may come out, and a new government initiative may come out or a new direction. That is essentially why that five-year term is in there to accommodate.

Mr. Sterling: I am not asking what happens after five years. I am asking what happens after the first year. Both of you are signing an agreement, Hearst and you. What does Hearst expect to get in the second year in government subsidy? Are they told at that time?

Mr. Tworzyanski: No, they would be asking for or looking at something over \$2.8 million and they would receive something less than whatever they ask for.



Mr. Markus: It is based on a plan, a budget submitted on the areas where they are going to be responsible for undertaking forest renewal and for a proposed road construction plan; ultimately we have to approve that.

Mr. Tworzyanski: That plan is produced after the signing of an agreement. At present, six months after signing an agreement, there is an indication of what their silvicultural and road building plans are. That is what is approved and then the funding that flows from that is straight mathematics.

Mr. Sterling: How many acres does \$2.8 million relate to?

Mr. Tworzyanski: In a forest management sense, it relates to the whole area, because one of the first premises of forest management is that it is best carried out if the area is fully accessed. That is rarely possible, so some balance of proper access happens, but essentially the whole area is under management, not just part of it.

Mr. Sterling: When you enter into these agreements, you must have some idea what the general cost is going to be for the government over a period of time, at least for a five-year time. How many agreements will you sign without knowing what is going to happen two years down the road or a year down the road? Do you not have any idea at all?

Mr. Tworzyanski: We have projections that essentially say--again, I am choosing a number out of the air, but it might be close--for every hectare you harvest, it is probably going to cost between \$400 and \$600 to regenerate that. There is not necessary any roads money in that. That is the ball park you are looking at provincially.

Mr. Sterling: Here you are getting into a long-term arrangement, in perpetuity, and then you are saying, "It is renegotiable over five years, so we cannot basically ask what is going to happen in the sixth year," but I cannot ask you what is happening in the second year of a major agreement. What do your projections say it is going to cost you for the Hearst forest management agreement over the next five years? You must have projections on that. Do you have projections on that?

Mr. Tworzyanski: I have an estimate I can come up with. We come up with estimates and we rarely get towards those.

Mr. Sterling: What is your estimate?

Mr. Tworzyanski: Between \$15 million and \$20 million.

Mr. Sterling: It is going to cost the government between \$15 and \$20 million over the next five years. We have heard that this can go on. So if it went on at that rate for a period of 20 years, we would be talking about \$60 million.

Mr. Tworzyanski: No. That is where I tried to make the point a little earlier that as you proceed into an agreement, the road portion of it starts to diminish because you can only build so much road once you have the area accessed. That is why I gave the example of the Great Lakes agreement, which has been under harvest since about 1920, where there is almost no money going into roads because the area is fully accessed.

Mr. Laughren: Does the regeneration catch-up reduce as well? There are so many years to catch up on cutover land that is not regenerated.

Mr. Tworzyanski: Yes. Regeneration would drop off slightly, but the major item driving the regeneration is the actual level of harvest. If you harvest constantly, you will constantly have a regeneration aspect to it. Does that help?

Mr. Sterling: How much of the \$15 or \$20 million is roads and how much is other than roads?

Mr. Tworzyanski: Probably about half and half. That is a guess because it depends on the planning process and the allocation of funding through the normal government process. Our premise has always been that we will fund the silvicultural aspect first and then what is left goes towards roads. That is on a provincial basis.

Mr. Mancini: What is the definition of the term you keep using? I am sorry to interrupt, Norm, but he keeps using silvi--

Mr. Tworzyanski: Silviculture is like farming. You do something with the trees. You prepare the ground, you plant them, you seed them and you take care of them. That is silviculture.

Mr. Sterling: Using your figures, in today's dollars, in the next 15 years after the first five years, we are talking about about \$25 to \$30 million, considering there would be no additional roads built after the first five years. Would that be a fair estimate?

Mr. Tworzyanski: If the government chose to proceed with paying for silviculture in perpetuity.

Mr. Sterling: As it does now.

Mr. Tworzyanski: Yes. At the present rate, that is straight mathematics.

Mr. Sterling: In today's figures, if you are looking at good intentions and everything else, you are looking at a \$45 to \$50 million agreement.

Mr. Tworzyanski: Over what term?

Mr. Sterling: Twenty years.

Mr. Tworzyanski: Yes. That would be a simple form of mathematics.

Mr. Sterling: It would be \$45 or \$50 million. That is considering the transfer of funds from the Ontario government to Hearst Forest Management. There is additional benefit in terms of having the assured timber supply for the sawmills.

When you go into a virgin area where there are no existing sawmills--I am not familiar with the timber licensing process--is there an auction or bidding process that takes place? For instance, if I wanted to get into the sawmill business and locate a sawmill somewhere in Ontario where there was not one--I do not know if that is possible or not--how is it established in terms of getting in on the bidding for the right to cut?



Mr. Markus: Do you want to speak specifically of that area on the map, which is a proposed FMA, or do you want to speak generally in Ontario?

3:20 p.m.

Mr. Sterling: I would like it both ways. Basically, if I was going into a virgin area where there was no cutting or sawmills, then that gives me a better idea of the real value.

Mr. Markus: If you wanted to start a relatively state-of-the-art softwood sawmill in Ontario now, you would have to build one that would be producing 30 million, 40 million, 50 million feet and up of lumber per year. I am talking about spruce, pine, fir, and I am talking about northern Ontario. There probably is not one economical site in northern Ontario to build a mill of that size on area that is not committed to existing operators, be they sawmillers or pulp and paper.

Mr. Sterling: You cannot give me a figure on that then.

Mr. Markus: I am sorry?

Mr. Sterling: Is there any competition ever for a timber licence for an area?

Mr. Markus: Not in my term as director of the timber sales branch. We have never had areas of timber offered for sale on which you could establish an efficient, state-of-the-art sawmill, because of previous commitments for timber.

Mr. Laughren: You need security of supply.

Mr. Markus: Yes, and long-term security.

Mr. Sterling: Then there is no way to establish what the value of the cutting rate is.

Mr. Markus: If that is the process you want to use, by going to an example of a greenfield sawmill operation on a virgin area, I do not think so.

Mr. Sterling: That was one way I was going to try to approach it. The other is that I do not know what it costs or what the right to cut an acre of timber, similar to the right in Hearst, is. What is that right worth?

Mr. Laughren: You have been asking perceptive questions in the past year, Norm.

Mr. Markus: Can I give the example in Hearst, about whether you could establish a sawmill in Hearst? I repeat again that the area outlined in red on the map, which is the boundary of the proposed FMA, is, with some minor variations, the area that had been committed to the three Hearst operators as a supply of timber for their sawmills. There was no room for anyone, nor is there now, simply because that commitment had been made to those three sawmills.

Mr. Sterling: In your comments before, you were talking about Mr. Levesque being concerned about one of the areas that was traditionally his area. The budworm had got into that area and he was interested in other areas

and saw this management group perhaps restricting his access to those new areas. Consequently, I drew the conclusion that there were then two mills after the same area. How do they normally resolve that dispute?

Mr. Markus: When you are hit with some sort of catastrophe, be it insect damage, killing of trees or a fire, you share the curse, and we will referee that sharing, if necessary.

Mr. Sterling: But it is not determined in dollars. It is a matter of right that you give out.

Mr. Markus: We would try to resolve that problem. If that kind of catastrophe impacted on one operator and there were three or four in the area, we would try to share the catastrophe or share what was left, whatever way you want to put it.

Mr. Sterling: What I would like to ask is whether you will prepare for the committee, if the other members want it--I certainly would like it--a cost and a benefit analysis of an FMA versus a normal timber licence operation. Obviously, one of the benefits of an FMA is its longevity. When I say costs, I mean the burden as well. You mention the burden of an FMA is that they have to put in roads that were formerly deemed the responsibility of the ministry, so that would be a burden in an FMA.

One of the benefits of an FMA is this \$15 million to \$20 million they are going to receive over a five-year period, or \$2.8 million in the first year. It is a little difficult for me to delineate between the two areas as to how much benefit or burden there is in an FMA or in a timber licence.

The other area of questioning, other than the financial part, is who determines the terms of the co-operation of the joint forest management agreement? Do you look internally into the structure, among Lecours Lumber, United Sawmill and Levesque Plywood? Do you dictate those terms?

Mr. Markus: Perhaps I can answer it this way. We got a request from a lawyer, who formed Hearst Forest Management Inc., about whether we had any requirements. I believe our lawyer made two comments, and this is in a letter on file. I have a hard enough time remembering my own business; I do not remember our lawyer's business. I can refer you to that letter. That was what we asked.

Mr. Martel: They just try to confuse you anyway.

Mr. Markus: It was very minor, as I recall.

Mr. Sterling: Within the forest management area, which is a very large area, who tells each of the three partners where they can cut and where they cannot cut? Who is responsible for how much money under the overall deal?

Mr. Markus: We deal as a government with the FMA holder. It is its job to do a certain amount of planning, which we approve. In that planning process, roads will be proposed and approved and cutting areas will be proposed and approved. It will be up to Hearst Forest Management Inc. to divvy up the areas for the two or subsequently three companies that are involved.

Mr. Sterling: If Lecours and United decide to gang up on Levesque, Levesque is out in the cold. Is that correct?



Mr. Markus: That is correct, or vice-versa. What they have in the agreement that prevents that among themselves, I am not privy to.

Mr. Tworzyanski: That agreement does not exist yet among the three parties.

Mr. Sterling: What I am saying is, essentially, if you sign an agreement with United and Lecours, Levesque is in the cold because they can do whatever they want with it.

Mr. Markus: That concern has been expressed.

Mr. Tworzyanski: You will probably find some correspondence relating to that or referring to that and I believe parts of it will say that the ministry will act as referee. I think Mr. Markus made that statement before.

Mr. Sterling: But they can decide who is going to cut where.

Mr. Tworzyanski: The co-operative is essentially the management company which decides where all three parties will operate under the planning process. It is not something that is unilateral. It has to be approved through the normal planning process, which is quite involved. It involves a certain number of public meetings, open houses, where this has to be laid out ahead of time.

Mr. Sterling: But your concern is that they are going to cut in an area. You do not care whether it is Levesque, Lecours or United which cuts there. What difference does that make to you? You said that was an internal matter.

Mr. Tworzyanski: It does make a difference to us. If I could explain the administrative aspects of this, the FMA company itself is a management company which will probably never cut a stick of timber. The timber will be licensed out under third-party licences to all three or two members of the co-operative for bookkeeping purposes and for invoicing purposes for crown dues. In fact, each area will be identified where each of those particular operators will operate through the planning process. It will not be just a large area. There will be an identification well in advance of who will be working where.

Mr. Sterling: Let us say all three are in it and Levesque comes to you and says, "These two guys will not let me cut in an area where budworm infestation has not occurred and therefore the quality of the lumber I am getting is less than the quality of the other two partners." What are you going to do about it?

Mr. Tworzyanski: We have said we will act as referee and we will have to see what happens if that ever occurs.

Mr. Sterling: There is obviously a conflict among these three parties already.

3:30 p.m.

Mr. Tworzyanski: They have indicated they are willing to co-operate. That is the final item, as you work through the file. They have indicated that three of them are willing to co-operate and, as Mr. Markus said, there has

been correspondence among their lawyers to decide on an equitable agreement, of which there are some references in this package that we got for our information. How they work that out, I do not know.

Mr. Sterling: You say you referee. What is your sanction? If you are the referee, can you say to the two partners who are coming down on the third: "You cannot do this to the third partner. We will not approve the cutting approval"?

Mr. Martel: Wait a minute. There is something wrong. They already hold licences in that area over there. Maybe, to help us, you might indicate where their licences are at present. Who holds what?

Mr. Chairman: I am having a little difficulty determining what this has to do with the matter that is before the committee. It is interesting, and I personally am interested in forest management agreements and the development of silviculture, but I am having a tough time seeing the relevance here.

Mr. Sterling: The relevance, I guess, is that the minister has a significant interest in one of the two parties that have an interest in this particular forest management agreement. We have heard this morning that this, just in government money, is worth somewhere between \$40 million and \$50 million in terms that will go to that forest management company and funnel into the company in which he owns a significant amount of shares.

We are now at a juncture. We will have to decide whether there is a significant benefit going to him as a minister in the government. That whole question will come to fruition somewhere down the line. I just wanted to find out a little bit of background as to how these things function so I could determine what power is within the agreement, what power is within the government and what power is within the members of the particular corporations that are involved in it.

I am finished my questions basically. Would you provide us with the cost-benefit on the two kinds of agreements, the licensing agreement and the FMA?

Mr. Markus: We will make an attempt at it. We will have to use our best ability to interpret what a cost and a benefit is when we do this.

Mr. Chairman: What he is asking for would be appreciated by other members of the committee too, if you could provide us with a kind of a primer on FMAs.

Mr. Martel: Can I finish the question I had asked on what Norm was doing? If they could indicate to us who holds what--

Mr. Chairman: I would like to do that, but I also have other members who want to ask questions. I would like to get through that list.

Ms. Hart: I am having some difficulty with this cost-benefit analysis that you are about to do because, as a matter of law, a licence is not worth anything.

Interjection: That is right.

Ms. Hart: It is a privilege the crown grants. I would like to ask you a couple of questions about that. Let us go back to the licences.



Mr. Sterling: It is like a tax exemption.

Mr. Treleaven: PCVs are another form.

Ms. Hart: Exactly. You cannot put them on your financial statements because they have no benefit; they have no value to the company. Is that similar in forest management? Let us go back to timber-cutting licences.

Mr. Markus: A person cannot transfer a timber licence without the agreement of the minister and he has not got the right to sell the right to cut timber. This is in the act. In an FMA, you have that exact same situation, but you have another part of the FMA document that speaks to the cost that the government is prepared to pay for the FMA holder to undertake forest renewal work, both approved forest renewal work and approved road construction work. I hope you are not mixing the two.

Ms. Hart: No. I understand the difference very well.

Mr. Markus: The act says you cannot peddle timber.

Ms. Hart: Yes, and following on from that, if I decide halfway through the agreement I want to retire and make my money, make my pile, from what you say I cannot sell my agreement or my share of the agreement or whatever it is and make money out of that deal. Can you?

Mr. Markus: If the FMA holder was a share-structured company, if that is the right term--I am not a lawyer--it could sell its shares. You could sell your shares to me.

Ms. Hart: And I do not require approval?

Mr. Markus: Not from the minister, not when it is by share acquisition.

Ms. Hart: That is interesting. But if it is any other way, such as assets--

Mr. Markus: If it is a transfer of the licence document, it must have the approval of the minister.

Ms. Hart: Okay. I want to explore with you a little the annual planning process. If I am a company that has a forest management agreement and I have put in my annual plan with the budget attached, is it conceivable under the agreement--I have not had a chance to read the agreement--that nothing will be approved in that year?

Mr. Tworzyanski: It is conceivable that nothing will.

Ms. Hart: What is the value in the long term of these agreements?

Mr. Tworzyanski: The security of tenure is the major value. The point I was trying to make a little earlier to Mr. Martel is that there is the security of having a land base that will feed your plant for a long time. Then you make your money in the marketplace.

Ms. Hart: I see, but I cannot count on any government money.

Mr. Tworzyanski: It is conceivable that the government could cut off or limit funding. Your example is quite appropriate, because the money asked for is never what is appropriated. That is sure in any jurisdiction, so it is conceivable you could get nothing.

Ms. Hart: What you are saying is that the value does not relate to the government portion of the funding; it relates to keeping my sawmill going.

Mr. Tworzyanski: Yes, that is exactly correct.

Ms. Hart: Given what you told us about not being able to get into this business at this stage because all the land is allocated, we may be talking not about a benefit of a great deal of money flowing in, but about a benefit in staying alive at all.

Mr. Tworzyanski: Yes, you might, and if that is the type of cost-benefit you are talking about, I do not think we are qualified without going to some specialized type of help to come up with that. You are into the marketplace and the business end of it, which I do not think we have any--

Mr. Chairman: Would you suggest it might be useful for us who are struggling with this concept to get an outside opinion on the matter of what an FMA is worth? I am reluctant to pursue this too much in the committee here with civil servants who are asked to put some value on it. Someone familiar with the business could give you a reasonably legitimate opinion on what this FMA is worth.

Many of us have dealt for years with developers, for example, who come into a municipal council and ask for a small rezoning. The rezoning itself is worth nothing, but it opens up the opportunity to operate a business and to make a lot of money. Depending on the municipality, the rezoning may cost a couple of thousand dollars, but it opens up the roadway to making a couple of million dollars. Would we be better off to get an outside person to give us a business estimate of what an FMA is worth?

Mr. Tworzyanski: I think we would find that very interesting.

Ms. Hart: Mr. Chairman, can I speak to that?

Mr. Chairman: Yes.

Ms. Hart: How are you going to do that? I am sure there are lots of expert evaluators, but from the answers to some of the questions I have been asking, that may be worth absolutely nothing. It is a subjective thing.

Mr. Chairman: Yes.

Mr. Brandt: It is upon that information that the company bases its decision to go into the deal in the first place.

Ms. Hart: Maybe not. I disagree. If the company wants to remain a player in this part of the world, it may have no option.

Mr. Brandt: It does not follow--

Mr. Chairman: That is something the committee will consider a little later. Do you have more questions?



Ms. Hart: I certainly do. Can you tell me a bit about the company the three players in this agreement set up? You were talking about Hearst Forest Management Inc. Is that what it is called?

Mr. Tworzyanski: Yes, that is the name of the company that was set up.

3:40 p.m.

Ms. Hart: Somebody was talking about the possibility of one of three partners being able to force out the other two. Does the ministry play any part in the shareholding of that company or anything that would determine the voting patterns? Do they vet the agreement among the three partners to make sure there is something in that agreement that enables the ministry to act as a referee?

Mr. Markus: I was going to say no to the first, but I forgot what it was. As for the latter, we will ask for the opportunity to vet that agreement.

Ms. Hart: So you have not done that yet?

Mr. Markus: On this ganging up of two on one, I wonder if I could turn that around. The other side of the coin is very important. We in the ministry, certainly in senior management, even ministers of the day, felt that a co-operative agreement would not set up a bear-pit amongst three former operators. We are almost fully convinced that it will set up the opportunity to co-operate in a way where all three parties are going to benefit. Why have three sawmills when you can have a hell-damner of one that is much more efficient? Why keep rebuilding three sawmills? This is a curse of today as far as I am concerned. Why do you need three planers or three planning processes when one will do? That is what we are hoping this will lead to. We sincerely hope it will lead to it for the benefit of the community of Hearst because that, I will repeat, is all it has.

Ms. Hart: Mr. Markus, can I follow up on that? How are you going to ensure that this happens?

Mr. Markus: We have never had the opportunity to force companies to merge. It has been my experience that the government is very reluctant to do that. It has not done it in the past in the forest industry. We think the co-operative forest management agreement is the vehicle to nudge them in that direction, that the sense of co-operating will be before them now.

Ms. Hart: I will repeat my question. In the co-operative effort, what step is the ministry going to take? Does it have a plan to make sure the three companies are going to co-operate?

Mr. Markus: We have no plans to force them together. We will continue to point out to them the benefits of acting in a co-operative manner in things they all have to do, such as logging, road construction and forest renewal work.

Mr. Laughren: That was not the question. What are you doing to encourage co-operation so that you do not have some kind of pressure tactics being used?

Mr. Tworzyanski: Some of the correspondence might speak to that where we have partaken as middlemen, or facilitators if you will, in discussions between the one dissenting person and the other two. In fact, they decided to come together. We do not have a master plan for doing something. We have access to the planning process. We will have an opportunity to vet the documents, whatever they may be, that indicate the rules of activity within the co-operative. Essentially, we will have to go from there as situations arise.

We have often been involved in sorting out situations among various third-party operators on other licences across the province where they do not think they are getting a fair shake for whatever reason, and the ministry has either entered into that discussion or dealt with it through the planning process as necessary.

Ms. Hart: I take it from what you are saying that it is in the interest of the operators to co-operate with you since you are the only act in town.

Mr. Tworzyanski: Exactly, as far as wood supply is concerned.

Ms. Hart: Thank you. Those are my questions.

Mr. Martel: If we had only acted years ago, we would be all right today.

Interjection.

Mr. Martel: My Premier promised it.

Mr. Mancini: I want to make some comments if it is possible at this stage. I am going to try to tie in a couple of things. I assume we are reviewing the FMA situation with regard to a possible conflict of interest involving Mr. Fontaine.

From the information I have seen--I will look to the researcher as I am saying this, and John Eichmanis can correct me if I am mistaken--from the documents we have, it appears that Mr. Fontaine complied with the conflict-of-interest guidelines as far as stating his holdings goes and then by putting such holdings in trust, as was called for. I am assuming from the information that we have, John, it is fairly accurate to say that, or is it accurate to say--

Mr. Chairman: Just to intervene here, what you got presented with this morning in the chronology of events is that it is clear Mr. Fontaine was a major holder in shares in United Sawmill, which is part and parcel of this forest management agreement. Whether that was of great value, any value or not is the subject of some discussion here this afternoon. Whether subsequently, as the Minister of Northern Development and Mines, he could have influenced conditions under which that FMA would operate will also be subject to some discussion.

Mr. Mancini: Mr. Chairman, my statement to John was not subjective and was not guessing. My statement was about acknowledging his holdings and putting the holdings in a trust. I was very specific with what I asked.

Mr. Chairman: Yes.



Mr. Mancini: So I am assuming from the information we have, it is fairly clear he did that. The information we came up with this morning--

Mr. Chairman: I am not going to let you ask John whether he is in conflict.

Mr. Mancini: I am asking John so we are very clear whether I read his--

Mr. Chairman: That is something that could be interpreted. You could, for example, interpret the fact that on December 23 Mr. Fontaine transferred shares of United Sawmill into a blind trust. You could read that to say that was trying to conform with the guidelines or you could also, I guess, say "Well, he did not do it until December 23, so almost six months went by, during which time there were negotiations under way for an FMA with a company in which he actively owns shares." You could read it either way. John cannot answer that for you. John can only tell you when certain things transpired.

Mr. Mancini: I accept that. I am going to assume he had until the end of December, rightly or wrongly, in order to do that. That being the case, I just want to take us back to the information we have. The information we have, which has been put before the committee today, is that a former minister of a former government more than three years ago announced in his constituency and in the Legislature that the government at the time considered co-operative FMAs as a benefit to the industry and to the part of the region that they were serving.

I am assuming, as every member of the committee has assumed, that there is some cost-benefit to that. I cannot see why anyone would want to work out these laborious agreement with other people in the industry and in the government unless there was some cost-benefit.

Taking those two items into one sphere, looking at them both and, from what I have been told today, adding to that what I think I have been told today by you gentlemen that the basic agreement has not really been changed since the change of government--

Mr. Tworzyanski: That is correct.

3:50 p.m.

Mr. Mancini: --then there is a great deal of continuity from 1983 to this particular date, July 1986.

Having also taken into consideration that Mr. Fontaine's company was one of the original ones involved in the FMA agreement, I think as far as my purposes are concerned, it is not so much the cost--although we should be interested in the cost, but that is not this committee's job--it is whether Mr. Fontaine was in conflict and whether somehow he benefited by certain government actions. If it is correct that he had until the end of December to comply--and unless we get information that states differently, I can assume that to be correct--then it is not so much of a guessing game about whether Mr. Fontaine was in conflict in dealing with the forest management agreement. It appears that he dealt with it in a businesslike manner from the time it was announced in 1983 up until the present when he was asked to disclose, transfer and put it in trust.

That is how I have summarized the activities this afternoon, while at the same time acknowledging what the chairman has said that there may be some question about whether he was in conflict. As Mr. Martel so aptly pointed out this morning, the dates are very important because if he had to comply by September 26 or October 31, or if he had to comply by the end of December, that puts a different light on the whole situation. I am assuming the December date. If the December date is incorrect, then I guess he was late in complying.

My main point is that while I know we are all interested in the cost, I think in some respect we should be more interested in the continuity of events and whether anything happened between 1983 and July 1986 to give anyone a feeling or a view that some undue influence was used.

Mr. Brandt: With respect to the FMAs, a number of FMAs have been signed with pulp and paper companies. Historically, they have been the large players in FMAs since their inception.

Mr. Tworzyanski: That is correct.

Mr. Brandt: Have there been other companies which are in the lumber business as such which have signed FMAs?

Mr. Tworzyanski: Yes, there are.

Mr. Brandt: Where are they and how many?

Mr. Tworzyanski: There are two; Dubreuil Brothers in the Wawa area and the Malette Lumber FMA in the Timmins area.

Mr. Brandt: How would they rank in size with what is being proposed here?

Mr. Tworzyanski: They are substantially smaller, being that they operate the equivalent of one plant each and this particular one would operate three plants, or probably more than three plants under the present scenario.

Mr. Markus: There is more lumber produced in that area than in the other two.

Mr. Brandt: Is it fair to say that in terms of any companies which are involved in the lumber business, this would be the largest FMA that is proposed to be undertaken by the government?

Mr. Tworzyanski: That is correct.

Mr. Brandt: The only point I want to make is that it is substantial and significant. It is not a small FMA. It is relatively new in the sense that, historically, FMAs have not been given to or negotiated with lumber companies, but have been given to pulp and paper companies. The only point I want to make is that this is relatively new ground, and this is the largest of the new undertakings in the area of lumber.

Mr. Tworzyanski: That is correct, yes.

Mr. Laughren: Is it large relative to the bigger ones?

Mr. Tworzyanski: Yes. This one is large.



Mr. Brandt: With respect to the road subsidies and the road arrangements that are arrived at--

Mr. Markus: Assistance funding.

Mr. Brandt: Assistance. I want to make sure I word this correctly for other reasons. You used a figure of 50 per cent in cost to cover some of those expenditures. Is that figure of 50 per cent correct?

Mr. Tworzyanski: I am sorry. The 50 per cent I indicated was that we reduced the secondary road funding by 50 per cent from the original funding package that was in the first FMAs in 1979-80.

Mr. Brandt: Part of the \$2.8 million we are talking about in the first year of this agreement would go for construction of roads?

Mr. Tworzyanski: Yes. That is correct.

Mr. Brandt: If the road costs \$100,000, what percentage of it do you anticipate constructing with the \$2.8 million? Is there a percentage figure?

Mr. Tworzyanski: You are asking the question in a very confusing way.

Mr. Markus: Are you asking how much of the \$2.8 million is for roads?

Mr. Brandt: All right, answer that question; maybe I can get to it in another way. What portion of the \$2.8 million is for roads?

Mr. Tworzyanski: I cannot recall offhand. In the first year, again depending on the roading history of an area, the roading ranges anywhere from 90 per cent of the first-year subsidy or first-year funding to sometimes 10 per cent. Generally, the trend is that by about the third or fourth year there is approximately a 50-50 balance between harvesting and silviculture on an overall basis. Some companies will be different from others because of their own histories. Does that take care of the question?

Mr. Brandt: Yes, but is it fair to say that when a company constructs a road in to a timber stand, only a portion of the cost of that road will be covered through this \$2.8 million; there will be additional moneys required in some fashion for that company?

Mr. Tworzyanski: Generally speaking, yes. The funding that the government has will not pay for the full cost of building that road.

Mr. Brandt: That is the answer I want. Now, where does the balance of that money come from?

Mr. Tworzyanski: The company pays for that.

Mr. Brandt: Can the company make application to the Northern Ontario Development Corp. for a portion of that?

Mr. Tworzyanski: No. There is no pyramiding of road funding on an FMA area. There is only one funding source.

Mr. Brandt: In other words, there is no piggybacking whatever.

Mr. Tworzyanski: No. That is just not allowed.

Mr. Brandt: Where would NODC funding come into play as a supplemental form of funding to an FMA?

Mr. Tworzyanski: The only place it could would be--I am conjecturing here--perhaps on a road for a multiplicity of purposes that would be built on its own merits with no FMA funding on it, or perhaps for major structures, bridge crossings in the multimillion-dollar range or something such as that. That is the only place I can envisage that coming in, because again, the funding package on an FMA is not designed to pay for major bridge crossings or anything of that nature. It is designed for road construction, normal culverts and so on. If there is a major bridge, the company has to foot that out of its own pocket. It has opportunities to attempt to get something such as that funded elsewhere, if it has a \$20-million structure on a cross-the-river width.

Mr. Markus: It is fair to say we are not aware of any funding to an FMA for roads, other than the FMA agreement they have with the government.

Mr. Tworzyanski: If I can expand on that, the forest management subsidiary agreement arrangements that were in place over the past few years have consciously been terminated at a particular point when an FMA was signed, so that there would not be any of this piggybacking of funding, as you call it.

Mr. Brandt: In effect, are those being phased out, if there are any?

Mr. Tworzyanski: If there were any arrangements, there would be either a phase-out or a straight termination of that type of funding flow to that road. An FMA road would start technically at a stake in the road, and you would now be building an FMA road.

Mr. Brandt: I think you have attempted to do this, but I still have not got the handle on it that I would like to have. Can you perhaps make some distinction between timber rights in an area, such as is the case now, and an FMA in the same area? What I want to get at is the Levesque operation, if it cannot come to a tripartite agreement with the other operators.

4 p.m.

In response to an earlier question I raised, you indicated Levesque would not go out of business. He has problems with the budworm, but he would still be able to cut, and you are disagreeing that the value of the timber in that area is discounted because of the condition of the lumber, or whatever.

If they cannot come to an agreement--there is some competition for an agreement now, quite obviously, because Levesque made application, United Sawmill did, as well as Lecours, and then they formed Hearst as a two-party group, leaving Levesque out. Levesque came in, Levesque went out, Levesque appears to be coming back in again now, according to what you are saying. There were three, two, three; I think that is the way you put it.

Mr. Markus: Three, two and soon to be three.

Mr. Brandt: Perhaps, if they can get together. Let us assume we are back at two for a moment in the competition for the FMAs in that particular area. What does that do? You say that Levesque would be allowed to continue to operate, but would he be at a significant disadvantage in his operation, not having a portion of or an interest in the FMA?



Mr. Tworzyanski: Not necessarily. He would still continue to harvest according to a plan that had been developed to cover off the area. Our position would be that he could not be given a portion of land over there and the forest management company builds all the roads and uses the government funding over on another side for its benefit. We have variations on that theme already where there are third-party arrangements. That is, a third party operating on an FMA area with no specific interest in that FMA area still constructs roads and does silvicultural work.

The FMA agreement has a pass-through clause that essentially says that where any activities of harvesting, road construction or regeneration are performed by a third party, the funding for that must pass through to the third party. So in fact the third party could derive some spinoff benefits from within an FMA. They would not be as participatory to the planning or organization of those activities as they might be if they were full partners, but they would not be at a total disadvantage because of that.

Mr. Brandt: Could you break out in rough percentage terms what the timber rights are of the respective three parties in that area now?

Mr. Tworzyanski: Not offhand. It is in here somewhere. There is a package that deals with the distribution of the historical harvesting levels. It would not be fair to make up numbers. They are in here, though.

Mr. Brandt: Who is the largest of the three? Can you answer that?

Mr. Tworzyanski: You are dealing with an issue on the FMA, off the FMA, because other parties have other sources of wood supply off the FMA area, other FMA areas, other arrangements; it becomes extremely complex.

Mr. Markus: I did not come prepared to answer that kind of question, I guess. We can get it for you, if you wish.

Mr. Brandt: I would like to have that, if I could. In the subject area, could you perhaps be of assistance in indicating whether there are other companies in recent times that have had any timber rights--I am speaking of a fourth company, or more, that had any timber rights--in that same area?

Mr. Tworzyanski: This is off the proposed FMA area?

Mr. Brandt: No, in the proposed FMA area.

Mr. Markus: Yes, there have been.

Mr. Brandt: What has happened to those companies?

Mr. Markus: The largest one is Levesque Plywood, which runs a plywood and particle board plant in Hearst, completely separate from Levesque sawmill, by the way. We had a volume agreement on that area whereby we will offer to Levesque Plywood a certain volume of poplar and peelers. That commitment, under that volume agreement, must be honoured by the FMA holder. It is part of our caveats that if you enter into an FMA on an area and there is a supply agreement on there prior to that which does not involve the FMA holder, he must honour that commitment, or we will ensure that he does.

Mr. Brandt: Are there any other companies in addition to the one you just identified?

Mr. Markus: We have requested that the FMA holder negotiate with the Calstock Indian band for a supply of timber, which I believe has been done. There may be a few small district cutting licences that are very minor amounts that may have been held over the years and we would ask them to honour those as well.

Mr. Brandt: They are going to be part and parcel of a total, global agreement dealing with these peripheral interests as well as the major interests of Levesque, Lecours and--

Mr. Markus: That is right.

Mr. Tworzyanski: That is right. The obligation is they must deal with those peripheral interests.

Mr. Brandt: In effect, their rights are going to be protected?

Mr. Tworzyanski: Yes, that is correct.

Mr. Sterling: Would their rights be protected for ever or do they come to an end when the licence comes to an end?

Mr. Markus: As long as they are good corporate citizens within their own right and that FMA exists, then the FMA is bound to honour the commitments to them.

Mr. Sterling: I meant peripherally.

Mr. Markus: That is what I am talking about.

Mr. O'Connor: If I could go back to the summary you presented us with when you first started talking about that, I notice on page 2 of the summary of events, September 24, 1985, you refer to a steering committee meeting. Can you tell me who comprised the steering committee? Would that be ministry personnel and members of each of the two companies at that point?

Mr. Tworzyanski: That is correct.

Mr. O'Connor: Do we know the personnel involved?

Mr. Tworzyanski: The minutes of that meeting are in the file. We will try.

Mr. O'Connor: If they are there, I can dig them out.

Mr. Tworzyanski: The minutes are there and the attendance of the particular meeting is listed on top.

Mr. O'Connor: You then refer to the directors of Hearst Forest Management Inc. being announced. Do you see that sentence?

Mr. Tworzyanski: There is an indication in those minutes of who the directors of Hearst Forest Management Inc. are.

Mr. O'Connor: Would one of those directors have been Mr. Fontaine?

Mr. Tworzyanski: I would have to see what the document says.



Mr. O'Connor: Do you know where they are for quick reference right now?

Mr. Tworzyanski: They are supposed to be in chronological order.

Mr. O'Connor: While one of you is looking for that, perhaps I could ask, since the wording is curious, that the directors "are being announced," do I take it they were not made known to the public previously?

Mr. Tworzyanski: I am trying to recollect. We asked who the directors of the company would be at that time and we were told they would work it out.

Mr. Brandt: Ostensibly, they would have to be principals of Lecours and United Sawmill, I would think.

Mr. Markus: We cannot recall the signature.

Mr. O'Connor: The point I am making is, they were being announced at that point; they perhaps were not known previously to the public in general. Is that the case?

Mr. Tworzyanski: That could be, I would not know.

Mr. O'Connor: Have you found them? Do they include Mr. Fontaine?

Mr. Tworzyanski: I am trying to find them. September 24, no, there was no Mr. Fontaine there.

4:10 p.m.

Mr. O'Connor: Was he announced as a director?

Mr. Tworzyanski: I will go through here and see. At that time there is a document in the package that was given to us. It is dated May 14, 1985, and that is a director's resolution of Hearst Forest Management Inc. "Be it resolved that the resignation of René Fontaine as a director of the corporation is hereby accepted and that Roland Cloutier is hereby appointed director," and so on.

That is a package they gave us that contains a variety of other information about the company. There is a standard form under the Corporations Information Act that we received at that time.

Mr. O'Connor: What is the date of that?

Mr. Tworzyanski: March 7, 1985--that is the date of incorporation; I am sorry. We would have to figure it out. There is an indication of "Present Officers' Full Names" and "Date Appointed Officer" and the date is May 14, 1985. The date on this document that Fontaine ceased was January 30, 1986.

Mr. O'Connor: Yes, we know that. That is why I was asking.

Mr. Tworzyanski: This is all we have.

Mr. O'Connor: What is the foundation for the sentence that the directors were announced on September 24, 1985?

Mr. Tworzyanski: They gave us this document that had the listing of all the directors and so on.

Mr. Markus: That was the first time we saw it.

Mr. Tworzyanski: That was the first time we saw it.

Mr. O'Connor: Therefore, it is not that--I want to shorten this--there were new directors being announced on that particular day. You were just being apprised of who the existing directors were and who had been directors since incorporation, which was in March.

Mr. Tworzyanski: That is correct.

Mr. O'Connor: One short point: Mr. Markus, you made a comment in talking to Mr. Brandt about good corporate citizens and so forth. In the course of granting timber licences, is there any particular criteria that must be met by an applicant as to its financial status and background and its corporate status? Do you do any checking in that regard or is the history--perhaps this is the answer.

Mr. Markus: The main way we check as far as finances are concerned is whether they owe us money. If they owe us money, we would be very reluctant to issue a licence or renew a licence.

Mr. O'Connor: That brings me to the second point. The history of your dealing with that company is perhaps all important or paramount in deciding whether to renew or grant another timber licence. Is that correct?

Mr. Markus: It is part of a very serious consideration when we issue or renew a licence.

Mr. O'Connor: Do you do any checking on the corporate status of the company, who the personnel are, whether they have changed since the last time you dealt with them and that sort of thing?

Mr. Markus: We check whether--I am not a lawyer--the company is in good standing or still exists.

Mr. O'Connor: How do you do that?

Mr. Markus: We go to the companies branch every time we reissue a licence or issue a new licence.

Mr. O'Connor: You check to see whether they are still in existence. Do you check the records that we have just looked at as to who the directors and officers are?

Mr. Markus: Not the directors. We simply want to know whether it is a legal entity, because we want to issue the licence to a legal entity.

Mr. O'Connor: That and whether they owe you any money. Are those generally the only criteria?

Mr. Markus: You have to get a district manager's report for the issuance or reissuance of an licence. If they have performed a large number of wasteful practices, trespassed or generally not abided by the Crown Timber



Act, we can use the leverage of not issuing a licence as the ultimate club. We have not done it a great number of times because of the financial effect on some people, but it has been used.

Mr. Treleaven: May I get some clarification on forest management agreements generally, perhaps using this draft forest management agreement with Hearst Forest Management Inc. as an example? Basically, it says that "the minister and company"--that is Hearst--"desire to enter into a forest management agreement...for a continuous supply of forest products" by the four licensees and for regeneration afterwards, etc.

There are four. You mentioned before the three, two and three to be, and so on. In the actual case, there are four licensees listed, Custom Sawmills being one you did not mention. Whether we are talking about two, three or four companies--four as it is here--they get together and form what you call a management corporation, a management company, which could be known as Hearst. It could be known as anything, but you also said you think of individuals rather than corporations. Do you tend to think in terms of dealing with the individual people rather than with corporations?

Mr. Markus: With the forest management agreement, we instructed the parties that we had to deal with a single legal entity, however they formed it.

Mr. Treleaven: Right, so they formed this corporation. Let us say there are four people and they have licences which make up that red part on the map. If one person wants to back out, is his licensed land included in the description for the FMA or are the lands licensed by that corporation dropped out and a lesser area of land included in the FMA?

Mr. Markus: It would depend on who would acquire the land of the person in the FMA who is getting out of the FMA.

Mr. Treleaven: Let us say he decides, "I do not want to be part of this FMA."

Mr. Markus: We would have to check the terms of the agreement between the three or two parties. We want the FMA to stay as a unit. We do not want to see it fractionated.

Mr. Treleaven: You are saying that though a fellow wants to back out, the land that he has licensed would be included in the FMA of which he is not a part?

Mr. Markus: It is now. The two parties that constitute Hearst Forest Management Inc. cover all the land--

Mr. Treleaven: Even though one of the companies might or might not be in or a third or fourth might not be in?

Mr. Markus: That is right.

Mr. Treleaven: Do the four companies stay in existence? They stay in existence and keep cutting their logs and operating their sawmills and so on. Right?

Mr. Markus: Yes.

Mr. Treleaven: They have this management corporation called Hearst

and so on. It is therefore possible for the management company to do nothing other than hold the FMA and administer it, having the little operating agreements, perhaps, with the four companies and just be a conduit--it could be an empty shell holding the FMA. Is that correct?

Mr. Tworzyanski: That is possible. Yes.

Mr. Treleaven: It is just an operating company, a management company?

Mr. Tworzyanski: That is right.

Mr. Treleaven: It could be a shell except for that. The four companies do not necessarily roll their assets into this management company?

Mr. Tworzyanski: No, they do not. That is a good point. Hence, here is a clause which requires a surety bond of \$350,000 to be held by Hearst Forest Management Inc. for due performance of obligations under the agreement.

Mr. Treleaven: It is up to the management company, therefore, to sign agreements with subsidiary--

Mr. Tworzyanski: Member companies.

Mr. Treleaven: Member companies--that is better than the word "subsidiary." It is up to the management company to sign agreements with member companies for the performance of their duties. The shares in the management corporation would be owned by the four member companies, or three or two?

Interjection.

Mr. Treleaven: Not by individuals, by the member companies.

You have confirmed they might amalgamate? Might these four companies get together and amalgamate it into an FMA? Is that possible? Not these four--any four?

Mr. Tworzyanski: Yes.

Mr. Treleaven: They could either stay member companies or they could all amalgamate into one?

Mr. Tworzyanski: They could. Yes.

Mr. Treleaven: It does not matter that much to you which they do?

Mr. Markus: We prefer--

Mr. Treleaven: --that they amalgamate. Therefore, the management company's sole asset might be this FMA and the contracts with the member companies?

Mr. Markus: They do have specific responsibilities, though. They are responsible for planning. We do not want to deal with two or three entities.

Mr. Treleaven: That is right, but as far as assets are concerned, it could be just a series of agreements, the FMA and four, three, 10 or whatever contracts out, one with each management company, as to their duties?



Mr. Tworzyanski: That could be so.

Mr. Treleaven: Therefore, there are no rules. You look at the management company. There are really no rules regarding the corporation's operation, the operation of that management corporation or its share structure or its shareholdings? You are not particularly interested; you are simply looking at that management agreement and the performance of the duties under it?

Mr. Tworzyanski: And the fact that we have an agreement with a legal entity, as Mr. Markus said. That is our major concern.

4:20 p.m.

Mr. Treleaven: Right. Therefore, one of the four companies, one of the four, two of the four, one of five or one of three, through shareholdings could control the management company. You are not particularly concerned whether each owned 33 per cent shareholdings. It could be 25; it could be 51. You are not particularly concerned about the share structures?

Mr. Markus: Honestly, to date, no, we have not.

Mr. Tworzyanski: It would depend upon the agreement they made among themselves.

Mr. Treleaven: Right. That is what I had taken.

Mr. Markus: Our concern ultimately is that the available wood on that FMA is shared--

Mr. Treleaven: According to the licences.

Mr. Markus: --pro rata the situation prior to the FMA.

Mr. Treleaven: Correct, which would be the various licences?

Mr. Markus: Yes, that is right.

Mr. Treleaven: So, therefore, it is possible through the share ownership of these member companies for one person or one family or one group to control the FMA through owning 51 per cent of the voting shares. Right?

Mr. Tworzyanski: Yes, if that was the original agreement.

Mr. Treleaven: You are not particularly concerned, again. All you are looking is at that management agreement and that, as you say, the timber is pro rata shared under the licensing agreements?

Mr. Markus: Yes.

Mr. Treleaven: What controls, if any, do you have on these companies making up the member companies? Do you have any controls on them?

Mr. Markus: None that I am aware of, other than a general one where we require under the FMA that the wood be processed.

Mr. Tworzyanski: In the particular plants within the area that is described.

Mr. Treleaven: That it be processed in that area?

Mr. Markus: That is correct.

Mr. Treleaven: That is fine. That helps clarify it for me.

Mr. Markus: Just to point out, this is a completely new experience for us. This is the first co-operative agreement we have launched into.

Mr. Sterling: What controls does the FMA company have on the licensees? What if a licensee says, "I am not going to put up with your demands in terms of silviculture" or whatever it is?

Mr. Tworzyanski: The silvicultural demands are within the agreement.

Mr. Sterling: That is with the FMA.

Mr. Tworzyanski: No, but within the agreement. Also, when those other parties, the third parties, would operate on that FMA they would operate as third-party licensees. One of the conditions we have is that they must participate in the planning process with the prime, which is the FMA holder, and they must comply with the silvicultural ground rules which are specified in each FMA document.

I am trying to phrase this carefully. We do not care who does it. The job has to be done in the way it is described in the document, whether the holding company does it or somebody else who contracts with the holding company.

Mr. Treleaven: So you really have your contract with what we are calling the management company?

Mr. Tworzyanski: That is right.

Mr. Treleaven: And you are saying, "We are looking down your nose to make sure these things are provided"?

Mr. Tworzyanski: They have the bottom-line responsibility. How they arrange that is--

Mr. Treleaven: Their business.

Mr. Tworzyanski: --up to their business arrangements.

Mr. Markus: However, we will, through approval of five-year and annual plans, make sure that the wood is distributed fairly. If one guy complains like hell and it seems he has been shafted as far as area and quantity of wood are concerned, we are there and prepared to play referee, and we will, and we will get unilateral about it if necessary.

Mr. Bossy: Just to follow up on what Mr. Mancini brought out earlier, in looking back at the background again because, to get more, and this has been good information concerning the forest management agreement, but as to the involvement of Mr. Fontaine, there are really three ministers involved here, going back from the 1983 original announcement. We find that on March 12, 1985, there was a letter from the Honourable Michael Harris whereby there was a directive indicating that the staff will be meeting with them--that is to say with Lecours Lumber and United acknowledging their



letters of February 18 to 20--indicating that staff will be meeting with them on March 28 to implement the discussions necessary to complete the agreements by the summer of 1985.

This commitment to formulate joint forest management agreements was also stated in a letter of February 6. Further, we go to April 26, 1985, when there was a letter from the director of timber sales of Levesque Lumber indicating that the Ministry of Natural Resources is proceeding with the co-operative forest management agreement and any other timber requirements of the FMA area will be met through third-party arrangements.

Further, there were May 15 and June 24, 1985, steering committee meetings following discussion concerning the arrangements, the agreements that would come forth to these companies by the former administration. The reason I bring this up relates to a Liberal member's question asked earlier, and I want to get confirmation. Mr. Mancini asked whether there had been any changes in the agreements that were proposed to the two companies, in this case with a possible third. You did indicate there were no changes to the agreement.

Mr. Tworzyanski: That is correct.

Mr. Bossy: That was during the time of the third minister to deal with this, so there have been no changes to the agreement. What I am trying to get clear in my mind is this: having no changes, what impact did the new minister have or what might he have brought to change anything? You say there have not been any changes. I think if you look at it from my perspective, we are looking at Mr. Fontaine's involvement whereby there are no changes in the agreement. The whole question here is value that might be returned to the minister and his involvement in the conflict.

I just wanted to summarize what has been said here and, on the basis of no changes made, there really have been no changes since 1983, involving three ministers.

Mr. Tworzyanski: That is right.

Mr. Martel: I want to go back to what I had asked. Could you indicate to me over on that map the present holdings being operated by the various companies. Is that possible?

Mr. Markus: In a very general way, sir. Because of short-term licensing, one to five years, these licences are a movable feast. They go wherever the mature wood is.

Mr. Martel: That is what I am interested in knowing. If this is a movable feast, who is holding what where?

Mr. Markus: I cannot give you the areas, but general location. In the Oba unit is the main area operated in the proposed FMA by Levesque. As a matter of interest he had a fairly substantial third-party agreement on Spruce Falls. It made a sort of logical location for him.

Mr. Chairman: May I interrupt for a second? We tried to put a microphone on there to pick it up, but if you would speak up a little bit, we might have a snowball's chance of getting you on record.

Mr. Markus: The Oba unit is the area that was mainly operated by Levesque prior to the FMA. It still is, as a matter of fact. Lecours operates

primarily in the Pitopiko and Custom in the lower part of the Pitopiko, but I would like to verify that by going back to my office and sending you a much more accurate description of that.

Mr. Martel: I guess what I am trying to get at is that the three companies are operating pretty well in three distinct areas.

Mr. Markus: Yes, they are, because we found it much better to keep the three of them apart than try to have them all operating down the same main road, for instance. We are just keeping peace in the valley.

Mr. Martel: This was under the old licensing arrangement.

Mr. Markus: That is right.

Mr. Martel: Under the new agreement, the FMA, the licensing agreement disappears?

Mr. Markus: No, they would still be issued licences, but they will be third-party licences, third party in relationship to the FMA. Whether the areas remain those that historically they operated in or whether they will change will be up to the FMA holder and our subsequent approval of proposed cutting plans.

Mr. Martel: Okay, fine, thank you.

4:30 p.m.

Mr. Sterling: The FMA company issues the licence.

Mr. Markus: No. We issue the licence.

Mr. Sterling: You said a third-party licence.

Mr. Markus: Yes. Can I explain that quickly? We issue a licence to a company. The crown is the first party, the licensee is the second party. The FMA holder is the first FMA. Lecours, Levesque, Custom and United will each be issued third-party licences on the FMA. The licence is issued by the crown.

Mr. Sterling: The licensee owes its obligation to the FMA company. There is some obligation to the FMA company.

Mr. Markus: You are talking about third parties now?

Mr. Sterling: The third party owes it to the second party.

Mr. Markus: The third parties should consult in the planning process to agree upon the cutting areas. Certainly, the two partners in the FMA will. We ensure Levesque will until he becomes part of the FMA.

Mr. Sterling: The problem here is to discover what the control mechanism is through this agreement with Levesque if he does not join. In other words--

Mr. Markus: How will his rights be protected?

Mr. Sterling: Yes. How will his rights be protected?



Mr. Markus: Ultimately, we will ensure that the volume originally committed to him will be provided to him and that he will not be disadvantaged in the areas that timber is provided.

Mr. Sterling: Will you provide for me a list of all the licences granted in this area over the past 10 years? Is that possible?

Mr. Markus: Yes, I guess so.

Mr. Laughren: I was wondering whether you shared any of the fears of Mr. Levesque about what he refers to as self-dealing by Hearst Forest Management, by the company set up to administer the FMA?

Mr. Markus: Frankly, I do not. The reason I do not agree with him is that I hear more discussion between the two parties which are in the FMA talking about how they can co-operate together about doing things rather than looking over each other's shoulder at the other guy to see whether one is being shafted by the other.

Mr. Laughren: Mr. Levesque was concerned because there was an intimate relationship between Lecours and United. Were there not family connections there?

Mr. Markus: I believe so, yes, one.

Mr. Laughren: One of Mr. Levesque's concerns was this fear of what he referred to as self-dealing. He was worried about that and expressed that to you. Why would you not have been more fearful of that happening, and does it not explain to you why Levesque was so reluctant to go into the co-operative process in the beginning?

Mr. Markus: Originally, he wanted to join the FMA and so stated in the letter.

Mr. Laughren: He then said he had been at meetings with the other two principals and felt he had been rebuffed.

Mr. Markus: Again, I cannot speak to other's feelings.

Mr. Laughren: I understand.

Mr. Markus: You asked me mine and that is my general impression.

Mr. Laughren: That is fair.

Mr. Treleaven: Just following up, the licensees stay with you. You have privity of contract, a contract between the crown and the licensee companies which remain in existence, and yet you also have a contract with the management company to perform. You give them certain money and demand certain tasks be done. What happens if either the management company becomes insolvent or the member company becomes insolvent? Where is your stick with regard to the member company if the management company is controlled by one man and a member company is controlled by another man? I am not talking just of this situation, but of any situation. Where is your stick with regard to forcing the management company to deal nicely with the member company? Let us say there is an insolvency here, let us say somebody cannot--

Mr. Markus: There is a third party that is being treated unfairly in whatever way, timber allocation--

Mr. Treleaven: By the management company, yes. What do you do?

Mr. Markus: The clout is with us in our approval in the planning process for such things as cutting areas, proposed roads, construction and maintenance, proposed forest renewal work, which has to be submitted by the FMA holder to us.

Mr. Treleaven: Let us say it is two or three or four years down the road that these troubles come along.

Mr. Tworzyanski: The annual activities are submitted in the form of a schedule based on the planning process to be approved annually. If that approval is not granted, operations may not take place.

Mr. Treleaven: What happens if that member company is somewhat insolvent, has no assets and says, "I am not going to kick in to the management company my share"? What do you then do? Then the management company does not have enough money to go ahead and plant trees or whatever. What do you do?

Mr. Markus: If the FMA holder does not perform, he is subject to having the FMA cancelled or not being renewed after the first time.

Mr. Treleaven: Therefore, you say, "We do not care what your member companies can kick in or not, we are looking at you, the management company, to perform, and we do not care where you get your money, from your member companies or out of the air, so long as you perform."

Mr. Markus: For any default of performance, we have a \$300,000 bond.

Mr. Treleaven: If one of those licensees, i.e., member companies, is defaulting, not putting in its money because it will not or cannot, do you ever hold the licence over their head, hold a stick over their head or do you just say--

Mr. Markus: The third-party licence? Yes, we can do that as well.

Mr. Treleaven: You can do that as well.

Mr. Markus: We can do it unilaterally to one of the third-party operators.

Mr. Treleaven: Therefore, in essence, you have the ability to help the management company police or keep in line one of the member companies. You have that power.

Mr. Markus: To some extent, yes.

Mr. Treleaven: Thank you.

Mr. Chairman: Thank you, gentlemen. We appreciated your coming in this afternoon.

Ms. Hart: I left this to the last because I am not sure whether these gentlemen are involved in it or not. In explaining the paper, in volume 3, are these the files that come from these gentlemen?



Mr. Chairman: Yes.

Ms. Hart: Can I ask a question about how they are organized then? We have five bundles of paper. They do not seem to be organized in any chronological fashion and they do not seem to have any rhyme or reason. Can you explain to me what they are?

Mr. Markus: We provided the complete file. We expunged nothing and had it in chronological order from 1984 to 1985 and 1986. That is how we handed it to the committee.

Mr. Tworzyanski: We provided four packages, actually: two thick ones, one thin one and another slightly thicker one that contains the draft document. They are, generally, in chronological order. There is some repetition, some additional pages for handwritten notes that are on the original file. You have the whole pile.

Ms. Hart: I guess in the translation they got out of order. Thank you very much.

Mr. Sterling: I have one last item. Why would you not give Levesque a separate FMA and let the other two be together?

4:40 p.m.

Mr. Markus: We never received that direction from my bosses. They wanted a co-operative FMA for the whole area.

Mr. Sterling: So you have no answer?

Mr. Markus: That is my answer.

Mr. Tworzyanski: Mr. Chairman, I believe we have three items before us. They deal with a cost benefit of an FMA versus a licence; a distribution of wood flow in the FMA areas, including this particular FMA area for the companies concerned; and a summary of licences on the crown units within this FMA over the past 10 years. Is that correct?

Mr. Chairman: That is correct.

Mr. Tworzyanski: I also understand that on the first item, the cost-benefit analysis, you are considering an outside agency, seeing that we cannot really deal with that.

Mr. Chairman: Yes. If you are telling us--and I thought I heard you say so--that you would have some difficulty in putting that together, then it would be the committee's decision to seek some outside assistance, if it wants to do that. We would accept that you are not in that business and that might be difficult for you to do.

Mr. Tworzyanski: Are we to be advised at a later date on the decision of the committee to proceed?

Mr. Chairman: Yes.

Mr. Tworzyanski: For the second two items, is there a time frame?

Mr. Chairman: If that can be done quickly, it would be of use to the committee. If it is going to take a long time to put together either of those two items, we would appreciate your telling us that and we would have to take it from there.

Mr. Tworzyanski: All right.

Mr. Chairman: Is there anything else where you need any clarification?

Thank you very much for attending this afternoon. We will let these gentlemen go and we have a little bit of business to transact such as statements.

Mr. Brandt: I have a quick point of clarification on whether these gentlemen can be called back if required. There may be some other matters at a later point.

Mr. Chairman: Yes.

There are a couple of things for the committee's consideration. We are having an obvious problem with the paper flow. I am prepared to listen to any suggestions anyone has about how we might control this a bit more. The problem is very much this. We did not want to vet any material that was sent to the committee. In order to do that, we gave you everything that anybody sent to us as they sent it to us. That is what you have.

From this point on, I hope the paper flow is hitting an ebb and there will not be this type of avalanche. You have what you want. You can leave it in the room and use it as reference. You can take it elsewhere and use it as reference. We will try to see that the people who present documents to the committee will come in and you will get them as they present them. We have a bit more information which we can give to you.

We cannot reorganize all this stuff at this point. It might be worth your while or someone on your staff to go through all the documentation. It will help a little bit if you give us a little bit of notice about which document you would like to refer to on a given day. It would help all of us pull the documents out and we would be aware of it, or if it is a relatively small piece of paper, we could duplicate a second set and circulate that.

We wanted to make sure you had what we had.

Mr. Laughren: I have a question. I am not sure how you do it, but is there some way the committee could be given some direction about what is relevant in this exercise?

Mr. Chairman: I was just going to get to that.

Mr. Laughren: It would have to be done by someone such as Mr. Eichmanis or Merike Madisso because I personally do not think today was particularly fruitful in wading through all the FMA stuff. That could have been much more focused. I am not criticizing because we just began and that was it. I can see that this could end up that we never get out of the swamp. I do not know how you do that.



Mr. Chairman: I was going to address myself to that. I gave everybody a lot of latitude this afternoon for two reasons. First, we were working at a disadvantage because we had not had the opportunity to go through all these documents and we were groping for pieces of paper and things such as that. Second, we had set up this afternoon to be basically a briefing session for people who were not aware of what an FMA is and how it works and what all the ramifications are of that. We did not have witnesses before the committee this afternoon. We were being briefed.

I want to caution you now. I want us to be a little more precise in questioning and it would be helpful if you would do questioning, for example.

Second, some of you are very adept at the old trick of getting the floor and then turning your backs to the chairman. I do not intend to look at the backs of your ugly heads much longer. If you do me the discourtesy of turning away from the chair to pose your questions, and you keep turning away from the chair, you will not get the floor very much. That is the only technique I have. It is not a good one, but it is all I have.

I am asking for your co-operation. I realize you want to pose a question to a witness who is in front of you and that seems reasonable to me. But I am asking you today and will remind you regularly that I want you to pay some attention to the chair so that I can give you little signals if you are off the line or out of bounds. I prefer to be able to handle that in a much gentler manner than throwing the gavel at you. If you persist in ignoring the chair, you do not give me much choice in the matter.

All I am saying is that tomorrow we will get a little more formal in the process. I will ask you to put questions to people. If you want to make statements afterwards, you may; but while there is a witness before the committee, I ask you to respect him.

Ask all the questions you want. I will appreciate it if you keep them a bit succinct. Today anybody on the committee who wanted to get on the question list and had a chance to have his little day. Tomorrow I will appreciate it if you will be a bit more succinct. You will have a slight advantage in being able to go through the material a bit more tomorrow, and we will try to be a little more formal. I do not want this to be a formal process. This committee has never operated that way and it has been to our advantage not to do so. If we have to get more formal out of necessity, we will.

Is there any other business that you want to do this afternoon?

Mr. Mancini: I have a couple of points. First, you gave some members more latitude than others.

Mr. Chairman: That is true.

Mr. Mancini: That is the first point.

Mr. Martel: Some members just made statements.

Mr. Mancini: I did not get very far in questioning, so that was the only alternative.

The other point is that our clerk needs help and we should have a second clerk. I am reluctant even to make demands, because I know how she is weighed

down by all this paperwork. I was going to suggest originally--it might not even be appropriate for me to suggest this--that the clerk do for us what my colleague Christine had done for herself; that is, put this work in black binders in some type of chronological fashion so we can pick up a binder when we need something instead of picking up all of volume 3. We could have two binders. I wanted to ask for that, but unless we give Lynn more help, I am not going to ask for it. That is point two.

Mr. Chairman: Let me respond to that because we have had a little conversation here. Putting it into binders or any other format does not solve the problem. We gave you the information as we got it; so it has not been codified, the pages numbered nor any of that. That is the problem. It is not whether it is in a binder or in a file folder. If we are able to get a bit of notice, we can help to identify it. We will try to get some clerical assistance in here so we can find the actual document and circulate it or help you find it in your file.

Some of you may wish to go through this and vet the material. You may do it yourselves or you may want your staff to do it. We were reluctant to do that because then we would be open to the accusation that we made the judgement call on what is a pertinent document and what is not. If we made an error, it is that we gave you too much information. We gave it to you as quickly as we could, but unfortunately the first occasion we could do that was this morning.

Mr. Laughren: I think Christine should do it.

Ms. Hart: There is an easy way to do it. This is in the litigator's background. Just get somebody to number the pages. Mine are just by exhibit numbers, the same way you gave them to us. Then at least we can find them quickly. If you try to get them chronologically, you are in trouble; then nobody will find them.

Mr. Chairman: We will work on that.

4:50 p.m.

Mr. Treleaven: You mentioned you hoped we would be succinct and you talked about the committee's usual process. I want to point out that we are in a unique situation. In my four and a half years on this committee, we have never had this situation. It is unique. I assume also that we are going to follow different procedures than we do in our agencies, boards and commissions examinations. The subject we are on is a lot more important. I assume when a person is on a line of questioning, he is going to be permitted to complete that line of questioning, whether it is short or long.

Mr. Chairman: The rule of thumb I will put to you is the one I always use. By the end of the day, anybody who wants to participate should have had a chance to do that. That does not mean somebody gets the floor at the beginning of the afternoon and holds it for an hour and a half and the other 10 people on the committee are given, for practical reasons, 20 minutes to conclude their questioning. I am not going to allow that.

If you have something that is particularly relevant, you will be stretching it hard if you take a long time in getting your question out. In other words, I am asking you to organize your thoughts and put your questions in an organized way. That problem is resolved when you stop expanding the



borders of your personal inquiry here. This afternoon it was fine to ask the same question about how an FMA works 95 times. Tomorrow it will not be fine, and I make that distinction.

When a witness gives you an answer, you may not like his answer but--

Mr. Mancini: You are just trying to protect Andy.

Mr. Chairman: I appreciate what you are saying. It is the reason in many circumstances the parties in power decide they do not want to send an issue to a legislative committee. They want to send it to an inquiry where there is one questioner and that one questioner carries the day and follows it to whatever he or she thinks is a logical conclusion. This reference has been made to a committee of the Legislature. There is no prime questioner; there is no one person to do the questioning. All members are equal, and my job, as I see it, is to try to give everyone an equal opportunity to ask questions.

Mr. Treleaven: But if the chair does not permit members to follow their questions to their end, then you are going to have some difficulties, Mr. Chairman.

Mr. Chairman: I do have some difficulties, but there are some aids to me. If I look around the room and see 10 people falling asleep and the person who is asking the question is the only one awake, that is an indication to me that he has fallen off the edge of the map. His questions are no longer relevant, and I am on reasonably safe ground to haul him in.

Mr. Mancini: He does not do that often.

Ms. Hart: Mr. Chairman, on a different matter, I have a question about participation in this committee, which may have been resolved previously. I am a newcomer. There is a rule of law that you cannot be a witness and an advocate in the same cause. I am concerned about Mr. Brandt who is going to be a witness tomorrow. I wonder whether he is also a voting member of this committee.

Mr. Chairman: Let me fill you in on that. The question was raised previously, and we did research that. I have asked, as the steering committee and the committee did last week, that for tomorrow Mr. Brandt will appear as a witness, as any member of the Legislature can. He has agreed to perform that function tomorrow. There is an obvious difficulty here in that one can hardly be a witness and a participant at the same time. For tomorrow he has agreed that he will appear as a witness in front of the committee, and subsequently, that may be a little awkward. Frankly, I do not think I would do it, but that is Mr. Brandt's business.

I take the attitude that for purposes of perception more than anything else, if I were to appear in front of this committee and offer testimony about something, I would not want to return the next day as a participant on the committee, substituting as a member of the committee. There is no precedent we can find which forbids that, and he is quite at will as a member to be in front of us one day as witness and with us the next day as a participant, as full a member of the committee as everyone else is. It is a little unusual, but the standing orders provide for that. There is no way we could inhibit it.

The other side of the coin is that we cannot take away Mr. Brandt's right as a member simply because he appears as a witness in front of the

committee. The precedents we have found on the matter are fairly clear. His rights as a member overrun any other perceptions we might have in any other situations where you might find it.

When the Legislature decided to send this issue to a committee of this parliament, for example, there were several members who asked questions. Mr. Brandt happened to be the first one. We could not say to Alan Pope and Bob Rae or anybody else that they cannot sit on this committee.

Ms. Hart: No, but we could say they cannot vote.

Mr. Chairman: No, we could not.

Mr. Martel: What rule is that?

Mr. Chairman: We cannot. Even though we discourage the practice, for example, a member of the assembly could walk in and sit down, and I would have to recognize the member. At that point, I could say, "Where is your substitution slip?" That is the only thing that prevents me from saying, "You cannot vote on the matter," but I could not exclude him from the room. I really could not exclude him from the deliberations. I could "not see" him or her, but that would be it. That is the bottom line on that.

Ms. Hart: Despite the rule of law?

Mr. Chairman: We make the rule of law.

Mr. Martel: We make the rule of law. This is the highest court in the land.

Mr. Sterling: I think Ms. Hart is perhaps--

Mr. Martel: She is still in court.

Mr. Sterling: --misinterpreting what the role of Mr. Brandt has been in this matter. Mr. Brandt has taken his responsibilities as an MPP to raise the matter in the Legislature. Other members have raised the same matter in the Legislature. There is nothing to paint him in one corner or another in terms of his duties as a member of the Legislature. He is not unlike any of the other members of the committee as far as I am concerned. He has the same rights. I do not understand why he cannot sit as a member of the committee tomorrow, but that is his own choice.

If people want to cross-examine me about this matter, they can cross-examine me. I am quite willing to answer any questions they have about my involvement in this matter; but once this Legislature ever takes the attitude that an MPP is disqualified from the process because he raised the matter in the Legislature, then that is a sorry day. The public accounts committee went through this same argument with Phil Gillies and it came to the same conclusion this committee is coming to right now.

Mr. Chairman: Yes.

Mr. Brandt: By way of further clarification to my colleague, I am here by way of invitation as a witness before the committee and not as a result of any personal wish on my own part. The subcommittee met and subsequently sent me a letter asking if I would appear as a witness and I



responded affirmatively. I was also asked to sit on this committee, primarily because of my interest in the matter in the House and the fact that I had raised a number of questions related to the activities of the minister in question.

I have no strong feelings about appearing as a witness. If the committee wishes me to make a statement with respect to some of my findings in this matter, I am prepared to do that. I am prepared to be questioned on it if it is your wish, but I have to say that this is not some elaborate scenario I have developed personally. As you well know, the initiative that came with respect to my being called as a witness came from the subcommittee, which Mr. Mancini sat on. It did not come from me. I was rather surprised when I was called in that role for some of the same reasons that Ms. Hart has raised, but I have no strong feelings on it one way or the other.

If the committee in its judgement determined that it was inappropriate for me to so do, that would be a decision I would live with. I feel strongly about retaining my right to be a member on this committee. I can assure you of that because of my interest in the matter. I just wanted to clarify that so that Ms. Hart would not think I had in some fashion superimposed my demand as a witness on this committee. That was not the way it followed.

Mr. Chairman: Is there any other business you want to transact?

Mr. Sterling: I do not have anything, Mr. Chairman, other than to ask for an expert on the agreement versus the timber licences. Are you going to get that work done?

Mr. Chairman: I would be prepared to entertain a motion to see an expert opinion, but I would prefer that someone think that through a little bit as to precisely what you want and who might provide us with that kind of advice, and then bring a motion before the committee and let us argue it out. I anticipate this is not something that could be done casually. You may want to go to the business world or the academic world to get that opinion. There are several places I can think of where you could get someone who would be prepared to voice such an opinion.

Mr. Treleaven: Mr. Chairman, I agree with you. Then, on the other hand, the longer we go in ignorance of what forest management agreements are in their totality and lack a complete understanding, the longer we will go likely wanting to bring people back. In other words, if we have three witnesses and then we understand FMAs, then we will have three witnesses we want to bring back, having more knowledge, to discuss with them and question them.

Mr. Chairman: As with a number of other items you are going to have in front of you, the committee will have to decide whether that is a relevant thing for us to do before we would seek an outside opinion on it. I would be prepared to entertain that argument. I have not heard the argument made so far. I am simply pointing out what the process would be in my view.

Mr. Brandt: A very brief point, Mr. Chairman. You brought up a matter that was new to me in terms of the activities for tomorrow. If it is expected that I appear as a witness tomorrow, I want to say to the members of the committee that I will be making a relatively concise statement, following which any questioning is quite appropriate. However, I was not aware that it followed that I would not be able to serve as a member of this committee

through whatever balance of the day might be left over. I would like to continue to participate if my role as a witness is concluded.

I see no reason for me to have to be in absentia for the balance of the undertakings of this committee. I would like the committee to address this question before we break off today.

Mr. Chairman: Let me try to clarify that. It is a technique we have used on a few other occasions when we have had similar problems. The reason a member has been asked to appear as a witness is essentially procedural. We wanted a member of the Legislature--and in this case the first member who raised the matter--to appear before us and put the allegations, so to speak. I anticipate there will be some questioning after that. Once that is concluded, you would no longer be a witness before the committee.

The committee may want to spend some time tomorrow straightening out terms of reference for the committee. You will set the rules as to what is a reasonable line of questioning, what is not relevant and that kind of stuff.

I anticipate that tomorrow we will probably take the morning, and Mr. Brandt will put before us what he believes to be improper behaviour, or allegations of it, on the part of another member. We will ascertain the boundaries for that, and at the end of that process, we will have some discussion for the remainder of the day on exactly what is before the committee.

We have touched on that a bit today. At the end of that process, we will have the motion and a reasonable understanding of the motion that has been put in the assembly, which is now before the committee. Mr. Brandt will have appeared before us and made whatever comments he wants to make, brief or otherwise. If they are brief, I will be amazed; otherwise I will be more comforted. We will then have the terms of reference for the remainder of the proceedings pretty well laid out for us. That will be tomorrow's exercise.

Mr. Sterling: Tomorrow we will probably have some time, I hope, to go over some of those other documents we did not go over this morning.

Mr. Chairman: Yes. We stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 5:04 p.m.





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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

TUESDAY, JULY 22, 1986

Morning Sitting





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Jonsson, J. M. (Wellington-Dufferin-Peel PC)

Laughren, F. (Nickel Belt NDP)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Brandt, A. S. (Sarnia PC) for Mr. Jonsson

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Turner

Also taking part:

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, July 22, 1986

The committee met at 10:14 a.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST: RENE FONTAINE  
(continued)

Mr. Chairman: We are about to begin the proceedings this morning. I want to raise one matter with the committee. You are aware that we are now providing, as of today, simultaneous interpretation, to use the correct term. Some media people have asked me whether they could get a direct feed of that. They cannot do it with the equipment we now have. We have asked to get one other piece of equipment that will allow them to take a direct feed in either language. In other words, they can make use of the translation services.

I propose that, if this is not a huge amount of money, the committee absorb it. If it is a substantial amount, several of them have offered to participate in some kind of a pooling process whereby they would absorb some or all of the cost. If it is reasonable with the committee, I will take that under my own jurisdiction and we will attempt to provide that tomorrow. The only question remains how we would finance it. Are there any objections? No.

The first witness this morning will be Andy Brandt. I want to explain to members and those gathered to watch the proceedings this morning that this is not a common event but it has been done many times before, where a member of the assembly has been asked to attend a committee to appear as a witness.

Perhaps we should clarify a point that was raised yesterday afternoon. Mr. Brandt is, of course, still a member of the assembly. He retains all the rights and privileges of a member of the assembly and, in all probability, he will continue to participate in the deliberations hereafter. This morning, he is here to assist us. We asked him, as the first person who rose in the assembly to make an allegation, to present in a formal way those allegations this morning. He has consented to do that. I believe you all have copies of his text.

The procedure for this morning will be that Mr. Brandt will have the floor to make his presentation and there will be an opportunity for members of the committee to ask questions. At the end of that time, the committee may want to reconvene, most likely this afternoon, to have some discussion about the focus of the proceedings from here on in, the motion that was presented in the assembly and matters related to that. That will be today's agenda.

Mr. Brandt, if you are ready, let us proceed.

Mr. Brandt: Mr. Chairman, members of the committee, I appreciate having the opportunity to appear before you this morning.

To preface my remarks today, I would like briefly to return to a point raised in our deliberations as a committee yesterday. I am appearing as a witness today purely at the request of the committee. It was their belief that as the first member of the Legislature who broached the former minister's ownership of Golden Tiger shares, I should present a summary of the facts that this committee has been charged to investigate.



It is my personal belief that such a summary could and should have been done by an outside counsel who could have devoted himself or herself fully to the task of organizing and presenting the pertinent information. Instead, we have, for one, a paper flow that I am sure committee members will agree verges on the ridiculous. However, to assist the committee I will give a short summary of the instances where I believe the former minister to be in contravention of the conflict-of-interest guidelines as established by Premier Peterson.

This summary is not meant to be all-inclusive and I emphasize that I am not acting in the role of an accuser. I am acting as a member of the Legislature who believes, as I think all of us here today believe, that these matters should be reviewed by an assembly of Mr. Fontaine's peers.

To begin with, a great deal has been made of a disclosure date of December 31, 1985. I am not sure whether that is the effective date for disclosure settled on by the Peterson government, as per our discussion in this committee yesterday, or whether that date should be October 31, 1985.

However, I would like to remind members of the committee that the date was arbitrarily chosen by the Premier. There is no accepted precedent for when disclosure should be made after a change of government. I would also like to remind the members of the committee that even if we accept December 31, 1985, as the disclosure date, Mr. Fontaine did not meet this deadline, nor did any of his colleagues in cabinet, including the Premier. Disclosure took place only after the matter was raised in the House on January 28, 1986, by my colleague the member for Leeds, Bob Runciman.

10:20 a.m.

The purpose for disclosure of holdings by a cabinet minister is, as we all know, to allow for public scrutiny of all decisions to ensure that a minister is acting for the public good, not for his or her own personal gain. Given that framework, I would like to quote briefly from the guidelines of the Premier (Mr. Peterson), "All disclosures required of ministers will be filed with the Clerk of the Legislative Assembly where they will be available for public examination."

Accepting Mr. Fontaine's statement of June 26, 1986, in the Legislature as being accurate and in view of this provision from the guidelines, it is my belief that Mr. Fontaine was in violation of the conflict-of-interest guidelines in a number of instances:

1. Mr. Fontaine did not declare ownership of 17,172 shares of Golden Tiger.
2. Mr. Fontaine did not declare his wife's ownership of 10,000 shares of Golden Tiger.
3. Mr. Fontaine did not disclose ownership of 5,000 shares of Villeneuve Resources, sold February 5, 1986.
4. Mr. Fontaine did not disclose ownership of 1,200 shares in Paladin Petroleum Corp., sold February 13, 1986.
5. Mr. Fontaine did not disclose ownership of 4,615 shares of Golden Tiger owned through United Sawmills, one of his corporations.

6. Mr. Fontaine did not disclose, even in his statement of June 26, 1986, ownership of one voting share of the Le Nord newspaper in Hearst, Ontario, held through his now-defunct company, Fontaine Lumber Co. Ltd.

7. Mr. Fontaine did not disclose the sum of \$50,000 owed to him by United Sawmill and René Fontaine Holdings Ltd.

8. Mr. Fontaine did not disclose the sum of \$13,000 owed to him by Evolution Hearst.

The examples I have given you are all direct conflict-of-interest violations. The Premier has spoken previously about these violations, admitting they were in contravention. However, the Premier also discounted these violations by stating that they were purely technical in nature. As a member of the Legislature, I cannot accept such a statement on the part of the Premier.

It is parliamentary tradition that the peers of any member decide whether any explanation of a perceived conflict of interest is satisfactory. For instance, the recent example of the member for Oriole is still fresh in the minds of each and every one of us. Ms. Caplan gave an explanation regarding her situation to the House, saw that it was unacceptable to her peers, and resigned.

I make the point that this is the only judgement possible in such an instance. To begin to argue at this point about a technical violation of conflict of interest, especially as defined by the Premier or a member of his government, is to set a dangerous precedent. There can be only one test of such a situation and that has to be the judgement of a member's peers.

I would like to move on to the question of inappropriate or unacceptable behaviour on the part of the former Minister of Northern Development and Mines.

The last paragraph of the Premier's guidelines reads, "These guidelines are not exhaustive, nor could they, in reality, embrace all possible situations representing or suggesting a conflict of interest." This provision is an obvious and realistic restatement of the general common law surrounding conflict of interest. While it is the usual practice to provide a set of principles or guidelines to govern conduct for persons in positions of responsibility, such as directors of nonprofit organizations and politicians, none the less, when the time comes to review or examine their conduct in the light of such guidelines, the courts have traditionally placed a heavy burden or onus upon them to establish strict compliance.

It is not enough to argue, as a defence, technical violation or borderline compliance. It is clear that one's conduct must be beyond reproach and that the mere perception of a conflict is enough to establish liability and guilt with a court. Thus the expression, "Justice must not only be done, but must also be seen to be done," is applicable in this instance, notwithstanding the fact that we are not a court of law.

This opinion is shared by a number of other observers and is accepted practice among other segments of our population. For instance, as many of my colleagues are aware, the Municipal Conflict of Interest Act creates a far greater onus upon local politicians than upon ministers of the crown. The same can be said for the obligations of a director of a nonprofit corporation relative to conflict of interest.



Perhaps it is best said by the Honourable John Black Aird, who was recently appointed by the Premier to review the present conflict-of-interest guidelines. In discussing the parameters of the review he was appointed to undertake, Mr. Aird said, "I think there is no higher trust than the public trust and...the public deserves to be served with the highest of ethics."

Using that as our standard, the question is whether the former Minister of Northern Development and Mines acted in an appropriate or acceptable manner.

Is it acceptable that the former member held on to more than 45,000 shares of a mining company doing business in Ontario after his appointment as minister of mines, regardless of the disclosure date set by the Premier?

Is it acceptable that the former member used what appears to have been insider's knowledge to sell those shares in Golden Tiger almost six months after his appointment, and by doing so obtained considerable personal benefit from their sale in that the value and price of those shares more than doubled during that period of time?

Is it appropriate that, according to the president of Golden Tiger, the former member as recently as a few weeks ago phoned the president of Golden Tiger and they discussed the prospects of Golden Tiger, while at the same time the former member was encouraging the Treasurer (Mr. Nixon) to institute tax breaks for small mining companies in Ontario?

Is it appropriate behaviour for the former member to have declared, once he was a member of the executive council, that he would push the Minister of Natural Resources (Mr. Kerrio) to approve a forest management agreement that would directly benefit him and the companies he owns, whether it is in a blind trust or not?

Is it appropriate behaviour for the former member to reveal in an interview published July 2, 1986, a matter under discussion in cabinet, in apparent violation of his oath of allegiance and oath of member of the executive council? That oath states that any member of the council will "respect as secret all matters that may be discussed by the executive council in arriving at a decision of the council and not disclose outside the council any facts pertaining to such matters."

In defiance of that oath, Mr. Fontaine told a reporter he resigned not only because of the conflict-of-interest charges laid against him but also because at the previous Wednesday's cabinet meeting the Premier pulled consideration of the Hearst forest management agreement from the agenda.

Finally, is it appropriate that the former member declared publicly, as reported by another newspaper, that he will not return to Queen's Park unless he gets his forest management agreement signed?

This is not meant to be an exhaustive list of the matters this committee should consider under the mandate given to it by the members of the Legislature. It is meant only to present a guideline. For instance, I have not broached the various directorships from which the former member did not resign, again in apparent violation of the conflict-of-interest guidelines.

Nor have I discussed the former member's apparent violation of sections 10 and 11 of the Legislative Assembly Act, primarily because the matter was just broached in this committee yesterday. Not being a lawyer, I am not sure if a violation exists in law, but I ask the legislative counsel to review that

issue. I refer specifically to section 11 of the Legislative Assembly Act, part of which I will read into the record:

"(1) No person is ineligible as a member of the assembly...(d) by reason of his being the holder of a mining licence or having a contract or agreement with Her Majesty or with any public officer or ministry with respect to the same or to mines or mining rights"--and this is the operative part--"but no such person shall vote on any question affecting such licence, contract or agreement or in which he is interested by reason thereof."

10:30 a.m.

I will save the committee's time and call its attention to clause 11(1)(f) of the Legislative Assembly Act.

However, as a parameter for this investigation, I would like to emphasize in the strongest terms possible an element of the situation I believe to be essential to any findings.

Premier Peterson, on July 2, 1986, appointed the Honourable John Black Aird to review the current guidelines regarding possible conflict of interest situations. It is Mr. Peterson's perception that the guidelines need review. Perhaps that is the case. If it is, then Mr. Aird, I am sure, has the confidence of the House to do the best job possible. But regardless of Mr. Aird's conclusions, it will not affect this investigation. There is no question of the fact that Mr. Fontaine was, by his own admission, in direct contravention of the conflict-of-interest guidelines as they existed at the time.

There is also no question that Mr. Fontaine was in contravention in spite of numerous occasions when his business interests were examined by the Premier and the Premier's staff.

A few days ago, in the public accounts committee, it was revealed that an independent lawyer, Ms. Mary Eberts, at the Premier's request scrutinized the affairs of every potential minister to the point of asking such questions as whether they had any secret drug addictions, whether they had any connections with organized crime, whether they had ever filed for divorce, or even if they had had any minor brushes with the law, including unpaid parking tickets.

Given that intensive questioning, it is inconceivable that Ms. Eberts did not go into detail with Mr. Fontaine over his business holdings and explain to him the ramifications of holding back any information. However, if Mr. Fontaine did not even at this point understand the seriousness of the situation, surely in January 1986, when his relationship with United Sawmill was questioned in the House, the Premier would have again fully scrutinized Mr. Fontaine's holdings and again explained to him the need for full public disclosure.

In spite of that rigid examination and in spite of the Premier's assertion that Mr. Fontaine was squeaky clean, we discover six months later that Mr. Fontaine still had holdings that he had not revealed. I cannot help but wonder if they would have ever been made public if not brought up in the House.



The point I am trying to make is that any inquiry in this matter would be incomplete without inquiring why the Premier did not enforce the existing guidelines. Surely in the instances I quoted before, the guidelines were clear enough, as were the violations.

Therefore, in view of the revelations made by Mr. Fontaine in the Legislature on June 26, 1986, I find it incredible that the Premier could stand in this House on January 30, 1986, after what must have been the second or third intensive review of Mr. Fontaine's holdings, and state, and I quote, "He"--meaning Mr. Fontaine--"conformed to all legal niceties." Obviously, Mr. Fontaine did not.

Flowing from that, how could the Premier, appearing before the public accounts committee a few days ago, state, and again I quote, "I did not spend a lot of personal time on this matter...and in retrospect, I clearly wish I had," implying that the procedure was at fault, only to have revealed a few days later that his transition staff, at his request, had asked such detailed questions as whether or not prospective cabinet ministers were complying with employment standards for nannies.

In spite of the Premier's publicly declared dislike of having to take responsibility for his ministers' compliance with conflict-of-interest guidelines, that indeed is very much the case. It is his responsibility to enforce those guidelines and if the former member had complied with the guidelines in July of last year, in October, in December, or even January of this year, we would not be here today.

I will not belabour the point, except to conclude that the guidelines are not in question here before this committee, though they may be in another forum. It is Mr. Fontaine's compliance with those guidelines and the Premier's enforcement of those guidelines that must be investigated by the members of this committee.

I now will answer any questions that there may be pertaining to the mandate given the committee in this matter.

Mr. Chairman: Before we begin, I want to remind you once again that Mr. Brandt has acceded to the committee's wishes to appear in front of the committee as a witness this morning, precisely to put any allegations that may have been raised before the committee. I now consider that they are before the committee.

Before you begin your questioning, I may compliment Mr. Brandt, first, on doing it in the way he did. I note that there are a couple of little items in there which may not be quite on the mark, but I think in the main, you have had presented to you this morning the nature of the allegations, and that will be the subject matter for questioning this morning with Mr. Brandt.

I am going to try to keep the speakers' list this morning and, I beg you, leave off with the interjections.

Mr. Laughren: Mr. Brandt, given the fairly specific and precise nature of your presentation, can I assume you have concluded that the apparent violation of the guidelines was not simply an oversight and that there is more to this than simply a technical problem or an oversight in adherence to the guidelines?

Mr. Brandt: I am prepared, as a member of the committee and not now as a witness before the committee, to hear the evidence that is brought before us and to make that determination at a later point. But I think it is very clear, with respect to Mr. Fontaine's last statement to the House, in which he disclosed not only the interest he had in Golden Tiger but also other interests which I have outlined in my brief presentation to you this morning, that he was in violation of the guidelines and resigned his position, both as a member of the cabinet and a member of the Legislative Assembly, on that basis.

I would have to say that my judgement at this point indicates there is more than just a technical violation or an oversight before us for consideration on the part of this committee. I am still prepared to look at the matter with an open mind and to make that determination at a later point, as I am sure the rest of my colleagues are as well.

Mr. Laughren: The reason I am asking the question this way is that I am concerned that, if a cabinet minister resigns in a situation such as this, which Mr. Fontaine did, do his colleagues in the assembly assume it is because he or she simply wants the air cleared or because he or she is guilty of a violation of the guidelines or guilty of a conflict of interest?

Mr. Brandt: I can only speak from a personal standpoint, having served as a member of cabinet. Were I not guilty of an allegation brought before the House by a member of the opposition, I would not resign. I would stand and fight my case on the basis of the validity of my argument or my defence. I cannot speak for Mr. Fontaine, but I assume he came to the conclusion that, in his mind at least, there was a technical violation, and I say, "in his mind, there was a technical violation," and therefore, he resigned on that basis.

Mr. Laughren: But what if, despite that, to use your example of yourself, you were standing and fighting because you regarded yourself as innocent of any conflict and your colleagues in the assembly did not agree with you, what then would be your position?

Mr. Brandt: Quite obviously, I would have no other alternative but to resign. My colleagues in the assembly are the final court of appeal for any member of the assembly. They are, in fact, my peers. So the judgement arrived at by the 125 members takes precedence over what I may personally feel or what any other member of the Legislative Assembly may personally feel.

At that point, and you phrased your question somewhat differently the second time, what you have indicated is that if my peers indicated that I was guilty, would I resign? Without question, I would resign.

Mr. Chairman: Mr. Newman, did you have a question?

10:40 a.m.

Mr. Newman: I will delay my question.

Mr. Martel: You have put this out pretty clearly. Obviously, there is the straight conflict of interest which lies in terms of not declaring shares, but the parts I find even more disturbing than the shares are the two parts about the forest management agreements and the resource tax because that hits at the very heart of why we have conflict-of-interest guidelines.



There is the suggestion that influence was being used to obtain ends if someone did not have shares, did not have that responsibility, that particular portfolio. That is more serious; although the other is serious, that hits at the very heart of conflict of interest. It is much more subjective and much more difficult to deal with than merely whether one did or did not declare one's shares. It hits at the very heart. Am I on the same wave length in this that you are, that you think that to be the more serious or what the end result of holding shares in the company leads to?

Mr. Brandt: Certainly, it is potentially more serious. I think the lack of disclosure is a very obvious matter that this committee can address in a more specific way than the less obvious question of whether or not the minister attempted to use influence that would in some direct or indirect way benefit himself in a personal sense.

I would ask, Mr. Martel, that you refer to newspaper items, one of which was an interview with Paul Martin, which outlined certain discussions that took place. It may well be in the interest of this committee to call Mr. Martin forward as a witness to verify the comments he made in that interview. It was carried in the Toronto Sun. I do not have the date in front of me at this point, but I could certainly get it for the committee very quickly. In that interview, it appeared from reading the interview as carefully as I did that there were certain discussions that took place with the president of Golden Tiger and the Minister of Northern Development and Mines at that time that would range into the areas you are identifying in your comments--areas of potential influence, whether or not they relate to FMAs.

In this instance, they do not, but they do relate to mining interests; so I would say that, in my view, you are thinking along much the same lines I am, that I have very serious concerns about that kind of thing, irrespective of whether or not the shares in question are in a blind trust or in escrow, as these shares are, which is somewhat different to a blind trust. We are dealing with the minister of mines and with mining interests and we are dealing with discussions that have taken place between the minister of mines and someone who has obviously a vested interest in seeing Golden Tiger become a success.

Mr. Martel: It goes broader than Golden Tiger, and that is what worries me. If one uses any influence to change a tax structure in a province, it means a whole series of ramifications.

Your being a former cabinet minister, though, one would have to ask the Premier with respect to the comments you raised regarding the disposition of the request to have the FMA approved and that it was sidetracked. What are the chances--and you know cabinet solidarity and the confidentiality of cabinet meetings much better than I--of us getting to discuss that in an open and frank manner as to precisely what went on at that time? That is why I say it is subjective.

Mr. Brandt: The problem with respect to that, Mr. Martel, is that whether the Premier wants to discuss it publicly or not, Mr. Fontaine discussed it publicly, which is what I am putting before this committee. He did discuss the fact that the FMA was removed from the cabinet agenda because it was--to use my words--a relatively hot political item at that time and a decision could not be made as a result of a number of problems that had developed in the House immediately prior to that.

The feeling was that the decision on a forest management agreement should be delayed, for whatever reason. That is the content of what was in that particular newspaper interview, and I question a minister of the crown releasing that information. What is on a cabinet agenda, what was discussed or what was not discussed is a matter of the oath of a cabinet minister and the violation of that oath.

Mr. Martel: The same sort of thing then applies to the tax problem, whether or not other ministers were even involved in a discussion, let alone whether it had arisen anywhere. That is why I say these things are going to be very subjective as opposed to simply whether or not one disclosed it. That is easier for us to deal with. The difficult problem for us is to get a handle on whether influence was being attempted to be used to obtain a certain goal, whatever that goal might be.

Mr. Brandt: Yes.

Mr. Martel: That is going to be difficult for us to do, and we will have to decide.

I think you excluded the 43,000 shares simply because Mr. Fontaine had got rid of them. I do not see those mentioned.

Mr. Brandt: No. I made it clear that this was not a comprehensive, total, all-inclusive list, that there are other things that may be brought before the committee. The chairman requested that I place before you the reasons this committee is sitting and hearing this particular item, and I did so. However, I made it clear that it was not an exhaustive list, and there could be other items.

Mr. Martel: I have one question, and maybe I can ask the chairman. Have you been able to obtain anything with respect to the whole question I started off with yesterday, the disclosure date? At what time were these things? The guidelines were pretty vague, and it is still difficult for me, even though I sit here talking to my friend across the way or when we talk to Mr. Fontaine tomorrow, to try to put this into some perspective without knowing what the starting date might have been.

I think Mr. Brandt puts it somewhat differently. He says, despite whatever the guidelines are, you really have to be on guard from the day you enter the cabinet.

Mr. Chairman: Absolutely.

Mr. Martel: Have you been able to obtain any material on that?

Mr. Chairman: Yes. We put in a request yesterday to get whatever documents or letters might have been transmitted to members of cabinet. We have been told there were some letters that were transmitted. We have not received copies of them yet. We anticipate we will get them shortly.

Ms. Hart: Can you help me understand some of the history behind the guidelines? You were a minister in the previous government and subject to the previous guidelines.

We have heard that Blenus Wright, the Assistant Deputy Attorney General, played some role last summer related to the new guidelines. Can you tell me whether he also played a similar role under the previous guidelines? Did he play any role at all when you became a minister?



Mr. Brandt: I cannot answer your question specifically. The previous guidelines were established in 1972 under former Premier Bill Davis. It is my understanding that they were the first guidelines of their type established anywhere in Canada. He felt there was a need as a result of a situation not totally dissimilar to this wherein some ministers found some complications that were difficult to be specific about related to their conduct and their behaviour, charged with the responsibility of being a member of cabinet, and those guidelines were established at that time.

They have been revised under the current government, and I do not take issue with that. I could make some comment with respect to the guidelines if you would like, but I cannot say whether Blenus Wright was responsible in some fashion for the 1972 guidelines. I do not know that.

Ms. Hart: That was not my question. Perhaps I will make it more specific. When you personally were required to comply with the 1972 guidelines, did you have any dealings with Mr. Wright on that matter?

Mr. Brandt: I did not.

10:50 a.m.

Ms. Hart: I ask that question because in the package we were given, which was exhibit 2/008A, the 1972 guidelines are included, and behind them is a draft letter signed by Blenus Wright to newly appointed cabinet ministers. I do not know whether you have had a chance to look at that letter.

Mr. Brandt: Yes, I have.

Ms. Hart: It would appear that he did play the role of adviser or at least some role. I am wondering whether you can tell me about that.

Mr. Brandt: If you are asking me if that letter came to me as a member of the executive council, I cannot recall that. I am sure if it was a letter that was given to all members of cabinet at that time, then, in fact, I would have received one. If your question, however, implies did I have a personal discussion with Blenus Wright with respect to any potential conflict I might personally have as a cabinet minister, no. I may have received the letter. I did not have a discussion with Blenus Wright.

Further to that, I do not mind sharing with you that at the time I was given the responsibility of being a cabinet minister I did conform to the guidelines, to the best of my knowledge. Certainly, it has been one year after the fact. If I did not comply, it would be a responsibility of the Legislative Assembly members to bring that violation of guidelines to the attention of the House, as I have in the Fontaine case.

I can assure you that, to the best of my knowledge, I complied with the guidelines. They were reviewed by the then Deputy Minister to the Premier, Dr. Edward Stewart, and I was assured that I was in compliance with those guidelines. I do not think it is particularly different from what Mr. Fontaine went through, other than the statements that the ministers in this government were totally squeaky clean because of a very exhaustive review that apparently went far beyond that of the previous government.

Ms. Hart: Perhaps we can get back to my question, which had to do with the role of Blenus Wright. From our package, it would indicate that he was the person charged with the responsibility for making sure that cabinet

ministers comply. I was not meaning to cast aspersions on yourself. What I want to know is, was Mr. Wright's role at that time the same as it apparently was last summer? He seemed to be responsible to advise cabinet ministers when to file and also to decide when to hand over the filings to the Clerk. Can you tell me if you know if his responsibilities had changed over that period?

Mr. Brandt: I have attempted to answer the question in a number of different ways. I will give you a brief history of this member's involvement in the House. I was elected in 1981, fully nine years following the Blenus Wright involvement with the initial letter in question, the original conflict-of-interest guidelines. I was a member of the cabinet in the summer of 1983. I am attempting to answer the question, in fairness to the member, but I cannot give you the information because I simply do not know.

Ms. Hart: Very well. Perhaps we can deal with another area. In the Hansard of January 28, 1986, I believe it was, it was fairly clear that your colleague Mr. Runciman interpreted the new guidelines in a way that would indicate that disclosure should have been by December 31, 1985. From something you said, it occurs to me to ask if you disagree with your colleague's interpretation?

Mr. Brandt: No. I am saying in my statement that is a matter that is still before this committee. I mentioned two dates as possible trigger points for the requirement for disclosure. One is the December date that was referred to by my colleague. In his best judgement, that was the date at which time compliance was required. I mention an October date in my statement, but I also go on to say that, irrespective of any dates, from the day on which you are charged with the responsibility of being a cabinet minister, you do have a certain level of conduct that is expected of you.

I call into question the level of conduct of the former minister only because of certain activities that have gone on since that time. I do not know how relevant the date is, but if you are asking me if I disagree with the time frame that was put forward to the House by my colleague, no, I do not necessarily disagree with it, but I am quite prepared to hear what the chairman has to say when we get a specific date from the Premier's office.

Ms. Hart: I guess what I am asking is, what is your best judgement as to the date for compliance?

Mr. Brandt: If you want an opinion, about 30 seconds before you take the oath of office as a cabinet minister you should be fairly certain that your affairs are not in any way going to violate the accepted code of behaviour that is summed up in the last paragraph of both the 1972 guidelines and the 1985 guidelines. It indicates a notwithstanding clause and points out very specifically that you have a code of behaviour when you are charged with responsibility as a minister of the crown. Before you take that oath, your affairs should be very much in order.

I also appreciate the fact that you do not have a great deal of time before becoming a cabinet minister. Some of us who have had the opportunity have waited patiently by the phone for the call to come. Frequently, it does not come and the level of apprehension increases somewhat, as Mr. Sterling and others who have served on the executive council know. The fact of the matter is that once the call comes, as soon as humanly possible thereafter, irrespective of any guidelines, one should put one's affairs in order.

As an example, if I were Minister of Health and had an interest in a



pharmaceutical company, I would look closely at that kind of relationship as being a potential violation of the guidelines, irrespective of the time frame involved. By the same token, if I were Minister of Northern Development and Mines and had an interest in a pharmaceutical company, the only interest I would have would be that of putting the shares in a blind trust and of disclosure. I would not call into question that kind of behaviour under those circumstances.

We are dealing with a somewhat different situation here. The one I have outlined before you is a Minister of Northern Development and Mines who has interests in mines and in certain timber stands that may directly or indirectly, in some way, shape or form, benefit that member. That is an entirely different situation.

Ms. Hart: Unlike yourself, I am not quite prepared to prejudge the situation that far. You have read the new guidelines and my question was directed to the new guidelines. Apart from your speech, you have told us there were two possible dates--one was an October date and the other was December 31--for compliance. What is your best judgement, under those new guidelines, as to when compliance should have been made?

Mr. Brandt: I will accept the December date, but I also leave that open to information that has yet to come before this committee, which the chairman alluded to in his earlier remarks. The question was raised by a member of the committee as to when we would get that date from the Premier's office. It is the Premier who establishes the trigger point for when disclosure and compliance with the guidelines are required. I do not establish that date, but I am not making an issue--I am sure you will realize it if you read my statement very carefully--over whether the date is December or October. I am suggesting to you that compliance is required as soon thereafter as is humanly possible when one takes the oath of office as a minister of the crown.

Ms. Hart: One question I neglected to ask is about your own compliance with the previous guidelines. Did you take legal advice in determining whether you had complied with the guidelines?

Mr. Brandt: I could probably answer by saying that whether or not I was in compliance is not the issue before this committee, but I do not mind saying to the member, no, I did not get not any legal advice as to whether I was in compliance.

Ms. Hart: Perhaps I should put it in context. I was asking to understand some of the history of the guidelines. Since we have you here and you can help us with that history--you have told us of your experience--do you know whether it was general practice to take legal advice in complying with the 1972 guidelines, at least in the time period of which you are aware?

11 a.m.

Mr. Brandt: I cannot speak for members who had more extensive business interests than I did. Perhaps because I am a poor man, I think my disclosures were relatively uninteresting, straightforward and without a great deal of controversy. I would have no qualms whatever about my disclosures being a part of this committee's review, although they are not part of the business of this committee at this time, but I cannot speak for other members of the executive council who may have had extensive business interests, and what actions they may have taken. I would not be privy to that information,

and there is no way I could respond to your questioning and give you any details on it because I simply do not know what my colleagues did. As an example, one of them happens to be here. I have no idea of what Mr. Sterling did in this instance, or other members of the executive council.

Ms. Hart: You told our colleague Mr. Laughren that although you are open to what is heard before this committee in the next few days, currently your judgement is that there were more than technical violations by Mr. Fontaine. Can you tell me on what facts your current judgement is based?

Mr. Brandt: On the facts I have laid before you; but I would also--and I know it is inappropriate for a witness to ask a question--have to raise the question of whether the member can tell me what a technical violation is.

Ms. Hart: Since you have used the term, I am content to use whatever definition you had in mind. What I am interested in is, I have heard your statement and I can see no facts in your statement that deal with anything other than technical violations, so I would like you, if you would, to point out to me--perhaps I am somewhat slow--exactly which facts point to more than a technical violation.

Mr. Brandt: Ms. Hart, I may accuse you of many things; being slow would not be one of them. I might say that I borrowed the words "technical violation" from your Premier. Let him determine what a technical violation is.

I have strong questions to raise about whether or not a member of the executive council who owns an interest in a mining company and fails to disclose that interest is simply technically violating the guidelines with respect to the requirement for disclosure. I think that is more than a technical violation and that is why I have put that before you.

You may, in your judgement, decide that is a modest oversight, a technical violation of some kind. That is your judgement call, but I have to tell you that in my judgement it is a relatively serious matter. Had the member in question not disclosed an interest in a pharmaceutical company, to use my earlier example, as the minister of mines, I would not have felt nearly so strongly about it, but we are talking about a minister who has a direct interest in companies that have a direct relationship with his ministry. That is an entirely different matter. It is not right in the first instance, in the example I used of the pharmaceutical company. That is not necessarily right, but I do not think my judgement would be nearly as specific with respect to that case as it is in another case where we have mines and timber rights related to a minister who has those direct responsibilities within his portfolio.

Ms. Hart: Can I take it from your answer that a Minister of Health, to take your example, who owns shares in a pharmaceutical company, or a minister of mines who owns mining shares must, under your code of morality, regardless of any guidelines, divest himself or herself of those shares?

Mr. Brandt: No, that is not required in the guidelines. It is required, however, that they be placed in a blind trust--not in escrow, but in a blind trust--and second, that they be disclosed. Neither of those two things was done by Mr. Fontaine.

However, if you want a personal opinion outside of what the conflict-of-interest guidelines call for, I would have to tell you that,



personally, were I the Minister of Health with interests in a pharmaceutical company, with interests in an old age home, with interests in something that may in some way, directly or indirectly, relate to my ministry, I would be hard pressed not to make the decision ultimately to dispose of those shares as quickly as possible, or I would feel very uncomfortable, as a cabinet minister, having to deal with those issues knowing full well that some relationship, either real or imagined, could be drawn at some time by some member.

It is a very awkward position and I appreciate it. I understand what a minister goes through under those circumstances, but I have to tell you that when you have the responsibility of a cabinet minister, you not only have to be dealing with these issues in an open and fair way, but you also have to be seen to be dealing with them in an open, honest and fair way.

It is very difficult, with the highest code of behaviour, with the highest of ethics, to have a minister dealing with a particular issue such as a pharmaceutical company while he is Minister of Health, without having some direct or indirect conflict arising at some point. My personal advice to that minister would be that if you intend to stay in cabinet, dispose of those shares. That is only my personal feeling on it. It is not a requirement under the conflict-of-interest guidelines. I appreciate the question and I understand what you are saying.

Ms. Hart: Nor was it a requirement under the 1972 guidelines, was it?

Mr. Brandt: That is correct.

Ms. Hart: Those are my questions.

Mr. Treleaven: Yesterday we were made aware of a sample letter from Blenus Wright to all--it said at the top--newly appointed cabinet ministers. It referred to, by memory, requesting disclosure within a few days--those were the words--of all real property owned by a newly appointed minister, by the end of the month with regard to other assets such as shareholdings and then by the end of three months with regard to divestiture, blind trust or a frozen blind trust. There seems to be some question about the difference between a blind trust and a frozen blind trust, but I am sure this will be explained later through these proceedings.

Therefore, by my calendar--and that sample letter was undated--it would seem logical that it would be within the very few days following appointment as a minister, would it not? Therefore, September 31 could well be the operative date for a blind trust or divestiture instead of the October 31 date we used.

Mr. Brandt: That is quite possible, but again, in my statement, I did not fix the date because it is a matter still to be decided by the committee upon receipt of the information from the Premier's office. That matter is still unclear.

Mr. Treleaven: You referred in your earlier testimony to a forest management agreement, to Hearst Forest Management and to directorships of Mr. Fontaine. Do you agree that we learned yesterday the shareholders of Hearst Forest Management are other corporations, and one of them is United Sawmill Ltd.? Was that established? Did we not learn that yesterday?

Mr. Brandt: Yes. That is my understanding.

Mr. Treleaven: Are you aware that United Sawmill Ltd. is a corporation made up of seven other corporations which were amalgamated into and became United Sawmill Ltd. in 1981? You are aware of that from yesterday?

Mr. Brandt: Yes.

Mr. Treleaven: We are dealing with United Sawmill Ltd. Can you help the committee with any details of any timber licences awarded to companies which had "disappeared" into United Sawmill Ltd.? I use "disappeared" in quotes because in a strict, technical, legal sense these companies do not "disappear" when they are amalgamated, but they cease to use that name, etc. Can you help the committee with any details of these timber licences?

11:10 a.m.

Mr. Brandt: It would appear from some of the documentation I have seen that after the amalgamation of the seven companies into United Sawmill took place, the seven companies disappeared, to use your term, or were no longer legally operative at that point. When we get further into the proceedings, I have evidence to bring before the committee relative to some of those companies receiving timber rights or cutting privileges when those companies were supposed to no longer be operating. I do not know that it is necessarily in violation of any particular laws, but I want to raise the question, perhaps when Mr. Fontaine is on the stand tomorrow. It does appear that some of the seven companies which became the one were still operating in some fashion when their corporate charter was no longer in existence and when the companies were taken over by the main corporation at that time, which was United Sawmill.

Mr. Treleaven: Are you aware whether Mr. Fontaine was a director or shareholder or was in any way associated with any of these companies, outside of United Sawmill, after he became a minister? Had he remained or was it purported that he remained as director of any of these?

Mr. Brandt: I believe that is the case, but I have to add the caveat to my answer, before answering you specifically, that I would like to check the evidence and information I have. I do not have that before me. It is my information that he was a director and was involved with some of the other seven companies that were rolled into United Sawmill.

Mr. Chairman: I would like to give a small caution to the witness. We have said on a regular basis prior to this point that anybody can ask for any information he wants. It damages our process a little if documents are produced at some subsequent time. If you think you have some documentation that is relevant to this case, it would be helpful if you tabled it with the committee as soon as possible. It will expedite the process somewhat and may solve some problems for us. If you can do that as soon as you can, we will be pleased to receive it.

Mr. Mancini: Mr. Brandt, I would like to ask some questions similar to those of Mr. Treleaven and along the initial vein that Mr. Martel took earlier. I believe that your brief deals with two specific points. The first is the disclosure, which may be very clear-cut. The second--I believe Mr. Martel used the word "grey"--is the matter of the forest management agreement. I would like to deal with the FMA portion because it may not be quite as clear for the committee or for people listening to the deliberations of this committee. While this may be repetitive of what we heard yesterday, it may not be repetitive for today's purposes. I ask for your indulgence.



It was very clear from the documentation given to the committee yesterday, which the committee members reviewed yesterday, that the initial forest management agreement was announced by the Minister of Natural Resources at the time, Alan Pope, in 1983. He held a news conference in Timmins in his own constituency to announce that he would consider a forest management agreement of a co-operative nature, meaning that he wished it would be government policy of the day that the companies operating in the area work as a co-operative, presumably for the beneficial economic impact on the north, that these companies work in a co-operative and sign an FMA with the Ministry of Natural Resources. I think that was established yesterday.

Mr. Brandt: I think that is essentially correct.

Mr. Mancini: That was approximately three years and six months ago. Further, the minister who succeeded Mr. Pope, Mr. Harris, continued along the same line a government policy that an FMA agreement be established for these particular companies in the north. I am sure you agree with that.

Mr. Brandt: Yes.

Mr. Mancini: From the information we have before us, it was established that three companies were originally involved. That went down to two and now we are back to the three initial companies again. Further, it was established by witnesses before the committee yesterday, who were officials from the Ministry of Natural Resources, that there was no change in government policy as to how the FMA would be awarded, that we were using the same policy announced by Mr. Pope when he was in his own riding in Timmins. I think the committee members agreed with or accepted the testimony of the witnesses yesterday. Would you concur with that?

Mr. Brandt: Yes, I would.

Mr. Mancini: The area I find difficult to agree with you on is whether or not some kind of undue influence was used. I ask you to give whatever testimony, information or evidence you have which in any way insinuates or appears to show that some undue influence was used when, in fact, we were following the policies that were established three years and six months ago and followed by two subsequent ministers, and with testimony from officials of the government saying there was no change and that the original three companies Mr. Pope was working with are the same three which, I assume, the Minister of Natural Resources is now trying to work with.

Mr. Brandt: Your question is, where would there conceivably be influence with respect to the ultimate decision, which has yet to be made?

Mr. Mancini: Yes.

Mr. Brandt: I call your attention to the newspaper article, which is in our information, headlined, "The Other Reason Why Fontaine Quit." In that other reason, given by statements of Mr. Fontaine in that article, he stated--and if you will allow me, I will try to be as accurate with my quote as possible--if the FMA was not given to Hearst, he would not come back to the Legislative Assembly or be a cabinet minister. He went on to say in that article that the people of Hearst too have a right to live--I assume he meant in the economic sense--and that they have a right to the benefits that would flow from an FMA.

When a cabinet minister makes that statement, whether it be in a public

statement directly through a newspaper--I am assuming that some of the people who work in the Ministry of Natural Resources would have the opportunity to read that statement--it could bring undue influence against a member of the bureaucracy that is involved in making that decision and ultimately the cabinet as a result of the minister's interests, the minister's personal, private interests in those companies and the benefit they may well derive. I think we established yesterday as well that an FMA is a very considerable advantage to the companies that are able to acquire one. There is a substantial sum of money involved in present and future revenues that would flow to those companies which are successful in acquiring a forest management agreement.

I hope I am answering your question by simply stating the minister has made everyone aware publicly that the FMA is important to Hearst.

Mr. Mancini: Do you have any other information, other than the newspaper article you are referring to?

Mr. Brandt: Not that I can think of at the moment, but the newspaper article is one I would bring to your attention. I recommend it to you as interesting reading.

Mr. Mancini: Your colleague Mr. Runciman, and possibly even yourself at this date, would agree that the date for compliance was December 31 and not the October date we talked about. As you stated earlier, you are waiting for some verification. Would you or would you not agree that Mr. Fontaine did in fact comply with the set of guidelines that required him to do certain things in regard to the FMA, if you use the December 31 date?

Mr. Brandt: I do not think in my statement I made specific reference to Mr. Fontaine necessarily being in violation of the guidelines as they relate to the FMA. What I did say was that the disclosure date, based on the statement made by Mr. Fontaine at the end of January 1986, did not include an entire series of companies which I have put before you for your consideration.

11:20 a.m.

Mr. Mancini: Excuse me. I am splitting the issue in two. One is the list of eight which you mentioned, which appears to be very clear, and the other is the FMA. I want to keep them separate. I want to deal specifically with the FMA. If we use December 31, if it is verified that is the date in regard to the portion relating to the FMA, would you agree or would you not agree that Mr. Fontaine did comply?

Mr. Brandt: I believe the actions taken by Mr. Fontaine at that time were appropriate in that he placed his interests in a blind trust.

Mr. Mancini: So he did comply.

Mr. Brandt: Depending on the operative date.

Mr. Mancini: Let us assume for just this moment--and we will get it verified later; we have to be very clear on this--if the date is December 31, in your view, did Mr. Fontaine comply, based on the information we have?

Mr. Brandt: I cannot answer that. First of all, you are asking a hypothetical question based on a date that we do not yet have full information on. All I know with respect to Mr. Fontaine's activities at the time is that he placed his interests in a blind trust.



I would also suggest to you that some of the statements made by Mr. Fontaine as a member of the executive council call into question his behaviour in relation to the "notwithstanding" clause and the normal and expected behaviour of a cabinet minister in relation to areas that may be a conflict of interest, irrespective, I might add, of whether or not the shares are in a blind trust.

If you are saying that by placing the shares in a blind trust, that is the end of a minister's responsibility, then I guess he was in compliance. However, I am saying to you that it may go beyond that.

Mr. Mancini: Of course, we can speculate on a lot of things, but we want as much as we can to talk about the guidelines. We have talked about the 1972 guidelines, and now we are talking about the 1985 guidelines. We are not sure where those mesh or criss-cross. For the information of the committee, I think it is very important to make the determination that if the date of December 31 was the date compliance was requested, then in my view, from the information given to us--as you said earlier in your opening statement, we have got about 18 inches of documents here, and I have taken the time to go through some of these documents--and from what I have seen, in fact, there was compliance.

I just want to know from you, because I have to be very clear--

Mr. Brandt: Let me respond in this way. He may have been in technical compliance.

Mr. Chairman: Let me intervene for a moment here because I have heard several members of the committee take the same line of questioning. I went through rather carefully last evening the two guidelines we know have existed in Ontario and the guidelines that exist in other Canadian institutions.

The one thing that struck me as being very consistent all the way through is that they had attempted to accommodate the practical problems of getting lawyers, making financial arrangements and all of that, and the dates that were provided in all of them were provided for the purpose of doing things, not for the purpose of disclosure. For example, all of the guidelines I read through last night said, "You have until such and such a date to table these documents with the Clerk," but the inference was fairly clear to me that the conflict of interest began the moment you took office. What you had the 60 or 90 days to do was to file documents, make legal arrangements and do things of that nature.

I think you should be aware of that distinction when going after the dates. The dates are relevant, but they are relevant in terms of filing documents, making declarations and doing legal transactions. That is not to say that the heart of the matter rests upon when a document was tabled.

The conflict of interest that is covered by guidelines, or by legislation in other jurisdictions, is initiated from the moment you take office. It would be ridiculous to say you can have a conflict of interest for three, six or nine months. That is not the relevant point. The point for the dates and for the time frames is to allow people to get their documents in order and to file certain things. Those are usually dates when they are tabled with the Clerk or some other officer of the House and made a public document.

Mr. Mancini: Did someone have a supplementary? I will allow a supplementary.

Mr. Chairman: I would prefer not to, because I am trying to get through a list here.

Mr. Mancini: Mr. Chairman, with your indulgence--and I understand your time limits--just a couple more moments, please.

I want to bring to your attention, Mr. Brandt, that in the information we received yesterday, there was a section dated March 12, 1985. It states under that date that there was a letter from the Honourable Michael Harris to Lecours Lumber and United acknowledging their letters of February 18 and 20 and indicating that staff will meet with them on March 28 to implement the discussions necessary to complete the FMAs by the summer of 1985.

This commitment to formalize joint FMAs was also stated in a letter of February 6, 1985. In my view--and I would like your opinion, Mr. Brandt--there is no way I can interpret the information I have other than that the government of the day wanted these agreements to be put in place by the summer of 1985 because the minister in that government and that cabinet had deliberated and thought the FMAs would be good for the north and wanted them to be implemented by the summer of 1985. That included the firms with which Mr. Fontaine had been involved.

Mr. Brandt: The fact that Mr. Pope introduced forest management agreements as a policy of his ministry and the fact that Mr. Harris inherited that ministry and that policy still begs the question that they did not come to a conclusion, and it was prior to Mr. Fontaine becoming a minister of the crown. The circumstances change very substantively once a member of the public is elected to the Legislative Assembly and becomes a minister of the crown. I think even you would agree with that.

The point at hand here is not whether the policy is right or wrong. I happen to think an FMA is an excellent way to proceed in terms of forest management timber rights for both lumbering companies and pulp and paper companies in the northern part of our province. It is a tremendously important economic force, and I take no issue with that at all; nor do I take issue with the current government providing FMAs to companies that can carry out the responsibilities demanded of them in the agreements that are ultimately signed.

I do, however, raise the question of whether it is appropriate for a cabinet minister to be involved in the signing of an agreement relative to an FMA simply as a result of his position as a member of cabinet. It makes it extremely difficult and calls it into question, recognizing, if you will, Mr. Mancini, that not only does the FMA grant certain rights but also provides, as we heard in testimony from ministry officials yesterday, considerable grants and subsidies to assist companies in carrying out the requirements for silviculture, reforestation, forest management. All those things are necessary under the terms of an FMA.

Given that as a fact, here we have a minister of the crown who will ostensibly in perpetuity have an interest in a substantial acreage, something in excess of 10,000 acres, with a 20-year agreement which is automatically renewable every five years for ever, as long as the two parties are in compliance and agree that the requirements of the agreement are being carried out appropriately. I can only answer you that way, sir.

Mr. Mancini: Mr. Brandt, no one disputes what you have told us this morning or what we heard yesterday. My next question is in regard to the letter from Michael Harris to Lecours and United on March 12, 1985. Have we



received any information or do you know of any information that would have changed the financial benefits? You keep referring to substantial financial benefits. Do you have or know of any information that would have changed in any way the financial benefits of the three companies originally involved in negotiations with the government of Ontario from 1983?

11:30 a.m.

Mr. Brandt: Very substantially. We heard yesterday that there were three companies involved, then two companies involved and back to three companies involved. Let us put the third company before the committee now. They heard the name yesterday, but the company of Levesque is the third company involved in the discussions and that very considerably changes the negotiations, which are still--I think the members of this committee would agree--open, active and ongoing. They have not been finalized yet.

Mr. Mancini: It is not quite like that, Mr. Brandt. My question was somewhat more specific. My question was directed to you in the vein that, do we have any information or do you have any information which we may not have that made the financial arrangements originally proposed by Mr. Pope, carried on by Mr. Harris and carried on by the new government any better than it was originally proposed?

Mr. Brandt: I am not personally aware of any at this time, no.

Mr. Mancini: My final question, Mr. Brandt, has to do with the statement made by the Minister of Natural Resources (Mr. Kerrio), as issued in a press release of July 7, 1986, where he announced the role of Dean Gordon Baskerville of the University of New Brunswick and Wilfrid Spooner--I believe a former member of this assembly. With the responsibility they have been given to conduct a formal review and then present their review to the cabinet, do you feel that they will be able to remove--I am assuming the concern that you have--the concerns that you have in ensuring that the FMA will be given out in a proper and satisfactory way?

Mr. Brandt: First, one would have to back up to the time of the appointment of that particular group. The responsibility it had been given was directly related to the fact that Mr. Fontaine was a member of cabinet. Were it not for the fact that Mr. Fontaine was a member of cabinet, there would be no need, no necessity whatever to appoint that group. In my view, the appointment of that group to review the decision is to attempt to diffuse a very difficult, complex, sensitive, political issue, namely, the granting of an FMA to a minister of the crown and/or companies which he has an interest in.

Mr. Mancini: If you are not happy with cabinet making the decision, based on information which was accumulated from 1983 and started by your own government, and now if you are not happy with an independent body doing the review, what will make you happy as far as making the FMA clear and available for everyone to understand? I am just listening to the point that you are trying to make and I would like to know from you what we have to do to carry out the policy that your previous government established in 1983, taking into consideration that we are dealing with the same people and with the same financial arrangements?

Mr. Brandt: Let me simply state I would feel the same level of discomfort if Mr. Pope had a lumber company in Timmins and was negotiating an FMA directly with the ministry for which he had a responsibility.

Mr. Mancini: Mr. Fontaine was not the Minister of Natural Resources.

Mr. Brandt: Mr. Fontaine was the Minister of Northern Development and Mines.

Mr. Mancini: He was not the Minister of Natural Resources.

Mr. Brandt: I understand that, sir, but the relationship between the Minister of Northern Development and Mines is a very direct one with the Minister of Natural Resources, whom I admit has the final responsibility with respect to this particular undertaking, the granting of an FMA, but the relationship is a very close one. The very sensitivity of this issue is the reason the Premier has appointed this group to review the decision in an attempt to diffuse a very difficult political problem that he has.

Mr. Mancini: I think the Minister of Natural Resources has appointed these people to conduct a review of the policy which your government established three and a half years ago because you, and maybe others, have raised questions on the fairness of how FMAs are granted. We established this independent body to do so, and now you are telling us today that you are not happy with it either.

Mr. Brandt: I am not aware of an FMA being granted to a previous minister of the crown, sir, and I am suggesting to you that the singular reason for the group to be called in to review the matter is that you now have a minister of the crown dealing with an FMA. There is no other reason for it.

Mr. Mancini: Mr. Chairman, this is my last question. Mr. Brandt, if I am understanding you very clearly, then you are saying something different to what was said that we agreed upon yesterday, and that is the total divestiture of all ministers as they enter the cabinet. A person could be the Minister of Northern Development and Mines and then, with a cabinet shuffle, could take on a different responsibility, as you yourself changed responsibility when you were in the cabinet. I am assuming then as the changes take place, the ministers have to keep divesting themselves of everything they have. The conflict-of-interest guidelines then are no longer what we are working with. We are working with something different, which says we demand complete divestiture. I believe that is something that this committee, if I am correct, has said we are not supporting.

Mr. Brandt: Let me respond by again using the Ministry of Health example I used earlier. If the minister had an interest in a pharmaceutical company and he was the Minister of Northern Development and Mines, that would not call into question in as direct a way a possible conflict of interest, because they are two unrelated matters. The Minister of Northern Development and Mines would not logically be dealing with a pharmaceutical matter other than as a normal course of business in a cabinet discussion on pharmaceutical matters. He would have to disclose and place those interests in a blind trust.

Mr. Mancini: Which he did.

Mr. Brandt: I am not suggesting that he would necessarily have to sell those particular shares, but I am saying that when a minister of mines has mining interests, when a minister of northern development has timber interests and owns a timber company, then that starts to call into question a more direct and more specific relationship that may well call for complete divestiture of those particular shares if one intends to remain in cabinet. You do not have to remain in cabinet. You can become a back-bencher and indicate that your business interests take precedence over your responsibilities as a cabinet minister. But I would tell you it is a position of--



Mr. Mancini: I can see the chairman limits my questions but not the length of your answers.

Mr. Brandt: It is a matter of intense discomfort, I would think, for any cabinet minister to be found in that particular position.

Mr. Mancini: Thank you for your co-operation, Mr. Brandt.

Mr. Brandt: Thank you, Mr. Mancini.

Mr. Sterling: Yesterday we heard officials of the Ministry of Natural Resources tell us that the forest management agreement with Hearst was going to be worth \$15 million to \$20 million in the first five years and if the rate of contribution stayed at the same level over the next 20 years, which is the duration of the agreement--albeit it comes into review after five years--it will be somewhere between \$45 million and \$50 million. That is the direct money that Hearst Forest Management Inc. will receive from the Ontario government.

We also heard that there were three partners involved in this forest management agreement. Were you aware of whether or not Levesque, the third partner, whose company I understand is twice as big as either that of Lecours or United Sawmill, was in agreement when Harris wrote his letter that Mr. Mancini refers to? Was he part of a triumvirate at that point?

Mr. Brandt: I really cannot answer that. Certainly, there was a point where a discussion was held to involve all three parties in an attempt to get a co-operative undertaking for a forest management agreement in that area. At some later point, Mr. Levesque withdrew his interest and the other two, both Lecours and United Sawmill, appeared to be the principals that were negotiating with the Ministry of Natural Resources.

More recently, it appears that the Levesque interests have come back into play on the matter and are still attempting to bring about a co-operative agreement of some kind, but I cannot be specific about the question you are asking.

11:40 a.m.

Mr. Sterling: When the Ministry of Natural Resources people were in front of us, I was not clear at the end--I do not know whether you were--whether they controlled the voting or the allocation of the moneys received from the Ontario government. Did the majority of partners in the triumvirate control how that money was going to be dispensed to the various forestry companies that would come under the FMA?

Mr. Brandt: It was my understanding that Hearst Forest Management, made up of one-third interests of the three companies, would make the decision as to the expenditure of the moneys that would flow from the provincial government. Two out of the three partners who make up Hearst Forest Management would make that decision.

Mr. Sterling: You are also aware that yesterday one of the Ministry of Natural Resources officials informed us that Lecours and United Sawmill were tied because there were relatives of Mr. Fontaine involved with Lecours as well.

Mr. Brandt: I believe there is some suspicion to the effect that there may well be a relative relationship between the Lecours firm and Mr. Fontaine's United Sawmill.

Mr. Sterling: Does it not concern you that there might be a possible conflict in terms of the control over that very large forest management agreement in the hands of Mr. Fontaine?

Mr. Brandt: It would be speculative for me to respond, because I do not know what is going to happen in the future. Were I the third partner, I would have some questions as to how my interests would be treated in the future.

Speaking on behalf of Levesque, this may well be the reason it was in and out of the deal and then back in again. The company may have had some of the same concerns I would have. It appears that two of the three partners could make the decision at some future point, ostensibly at the expense of the third party who has a minority interest. As I understand it, the partnership is one third across the board, in other words, a one-third interest to all three.

Mr. Treleaven: Mr. Brandt, you will recall that the draft agreement we examined yesterday had four companies. The Ministry of Natural Resources employees told us there were three companies, then it went down to two and is now potentially back to three, but the draft agreement in front of us had four companies. Do you recall that?

Mr. Brandt: Yes.

Mr. Treleaven: Do you have any explanation of the fourth company? You are talking about thirds.

Mr. Brandt: No, I was not aware of the fourth company. I cannot give you any additional assistance by way of information on that one.

Mr. Treleaven: Is it your understanding that they were equal? I do not recall that from yesterday, and perhaps I missed it. Their shareholdings were equal, and they were split three ways as equal shareholdings in Hearst Forest Management made up of the three member companies.

Mr. Brandt: That is correct.

Mr. Treleaven: Do you have any idea where the fourth one, the draft corporation, was going to get its shareholdings?

Mr. Brandt: No. Other than the brief information we received yesterday from the Ministry of Natural Resources officials, I have no further information or evidence to bring before the committee about the fourth company.

Mr. Treleaven: Is it not correct that the Ministry of Natural Resources employees yesterday advised us there is no requirement to be equal thirds, equal quarters or equal halves, and that they have no interest in the shareholdings being in any particular proportion?

Mr. Brandt: They made it very explicit in their response to us that they were only interested in the conduct of the management company--Hearst in this instance--and they would call upon it to perform up to the terms and conditions outlined in the agreement. They were not concerned about the



behaviour of the company specifically but of Hearst Management, which would be the operative signatory to the agreement with the ministry.

Mr. Treleaven: Nor who owned or controlled the majority of the shares in the management company known as Hearst Forest Management Inc.

Mr. Brandt: That is correct. They indicated that was not a matter of principle concern to them either.

Mr. Chairman: Mr. Newman, you had a question earlier. Do you have any further questions of the witness?

Mr. Newman: No.

Mr. Bossy: First of all, based on your statement, Mr. Brandt, you made the comment that you are not acting "in the role of an accusee" but you are currently acting as a witness.

Mr. Brandt: I think I corrected that in my statement, "as an accuser". That is a misprint, sir. It is the same thing.

Mr. Bossy: But within your statement you do make those types of comments that border on whether it was proper for the minister to do certain things, and that also concern the statement where it would be in Mr. Fontaine's interest whereby he would have derived some personal benefits in what he did and that, by so doing, he would have obtained "considerable personal benefit" from the sale. You did make the accusation that from what has transpired in all the different areas you feel there was a conflict and that he did, or could have benefited by it.

Even though you were asked to appear as a witness before the committee, you are an accuser, based on your statement in the House concerning Mr. Fontaine's involvement in his business dealings.

Mr. Chairman: To clarify the point that has been raised, Mr. Brandt was asked to appear before the committee because he was the first member to raise the question. He was asked to put the questions that were raised by yourself and other members in the House before the committee. He has done that. Whether you want to refer to that as an accusation, an allegation, the raising of a question, whatever your terminology might be, it seems he has done what he was asked to do.

Mr. Bossy: Mr. Brandt, the other area you referred to several times concerned the Minister of Health. You said if he were connected with pharmaceuticals or rest homes, or whatever, he could be in conflict. After putting these businesses in trust, the words you used were, "I would consider that ultimately I would feel responsible to dispose of these businesses." In other words, when you say "ultimately," what length of time would you consider, being Minister of Health, that you had direct involvement in a pharmaceutical or rest home? How long would you consider that 'ultimate' to be?

Mr. Brandt: As soon thereafter as is practical. As stated by the chairman, you can find yourself in a conflict-of-interest situation, irrespective of the deadline of disclosure requirements, the moment after becoming a minister of the crown.

I want to point out that I recognize some of the frailties and some of the grey areas in conflict-of-interest guidelines in whatever jurisdiction. I

recognize they are not as clear-cut and succinct as we would all like them, because the number of possible, convoluted situations that one could conjure up in one's mind as to what might happen to a minister of the crown who owns a particular company could go on an on ad infinitum. I think we all understand that. They are very difficult.

11:50 a.m.:

However, I want to point out to the committee, and to you, Mr. Chairman, if I might, and to Mr. Bossy, that placing your interests in a blind trust simply means that you have no active control of those shares at that time. Ostensibly at some future point, you will relieve those shares from a blind trust and/or from escrow, or some other trust arrangement of a similar type, and you could have a future benefit from an arrangement that in case of an FMA goes on for a minimum of five years, a contractual arrangement for 20 years or an automatic renewable factor within that agreement that could go on in perpetuity. Therefore, at some future point, Mr. Fontaine, myself or any other member of the Legislative Assembly or member of the crown, more specifically, could even benefit from those shares being placed in a blind trust, which is one of the only mechanisms we have available to us to require of a minister that he comply with guidelines.

I am only saying that if you take a look at that very objectively, I am sure you can understand, sir, that the value of those shares, even though they are placed apart from your direct control, can still appreciate in value. They can still go up in terms of their net worth to the member in question, and that calls into question whether even a blind trust is adequate under certain circumstances.

Out of that flowed the specific example I gave of a minister of mines being involved in mines as opposed to a minister of mines being involved in a pharmaceutical company, which would be far less sensitive in my view, not necessarily under all circumstances without question, but less sensitive than the direct-line relationship I have drawn in the cases I put before you in my statement.

Mr. Bossy: I have a further question concerning that December 31 deadline. My colleague Mr. Mancini was trying to determine whether that is the deadline date. The question was whether you agreed that Mr. Fontaine has abided by the guidelines concerning the FMA. I just want to get the facts in mind. I will follow on and then you can expand if you want. If December 31 was the accepted deadline and if Mr. Fontaine complied with that deadline, would it not follow that what has taken place since that deadline would fall in line with what you have said, that the minister would then, being directly involved or whatever, that ultimate decision to divest, regardless of when he would divest, in the ensuing months or whatever it might be, has been complied with?

Mr. Brandt: I think I responded to that question earlier by stating that, in my view, he was probably in technical compliance with the guidelines, given the dates that were provided in the hypothetical circumstances Mr. Mancini raised. I do not know how I can answer you any differently than that.

Mr. Chairman: Mr. Martel, you had another question you wanted to ask.

Mr. Martel: I guess what is worrying me, right where I started from, is that one is subjective. I will wait for the discussion this afternoon.

Mr. Chairman: Are there any follow-up questions for the witness?



Mr. Sterling: This December 31 date bothered me in terms of the Liberal caucus bringing it up time after time. As I read the guidelines produced by the Premier in September, they say on the bottom of page 2, and I believe you have a copy: "Members...will be given reasonable time to comply with these guidelines. Their land holdings will be made available for disclosure within a few days...." That means to me that Mr. Fontaine and every other cabinet minister should have revealed their real estate holdings, their land holdings, within a few days after receiving those guidelines. We are trying to ascertain when they received those.

Second, it says, "...and the disclosure of other holdings, where applicable, will be made within a month." The very latest date for revealing all of their holdings, if they received it on the last day of September, would be the last day of October. It does not matter whether they had them in a blind trust or they were not in a blind trust, whether they were in escrow or they were not in escrow. The way I read those guidelines, if the cabinet or the Premier was serious about them, they would have complied within a month of whenever they received these or whenever they were told about them prior to that time. The trust should be set up by the end of the year.

Mr. Chairman: That is a very long question.

Mr. Sterling: When you say Mr. Fontaine was in technical compliance, what do you mean by that?

Mr. Chairman: That is a shorter question.

Mr. Brandt: Given the hypothetical date that was arrived at by Mr. Mancini in his question, when he asked if the December date was the accurate date, would Mr. Fontaine be in compliance, I said in all probability in technical compliance. If you refer to the document dated September 1985 and the last paragraph on page 2 of that document which states, "The land holdings will be made available for disclosure within a few days, and the disclosure of other holdings where applicable will be made within a month," then you are absolutely correct, compliance would be required and disclosure would be required by, at the latest, the end of October 1985. I think that is absolutely correct. However, I did, and I want to say this again--

Mr. Chairman: You do not have to match him word for word.

Mr. Brandt: I hedged slightly in my response only because we have not received back from the Premier's office a specific indication of when his office feels that compliance was required.

Ms. Hart: In fairness to Mr. Fontaine, Mr. Sterling was referring to the 1972 guidelines and--

Mr. O'Connor: No.

Mr. Brandt: If I may, for the edification of the member, it is document 2/008 and it has been filed with each of the members of the committee, so you have this document before you as well.

Mr. Chairman: I assume we have now exhausted the questions for the witness. We will resume at two o'clock and spend some time going over precise guidelines and motions that have been made.

The committee recessed at 11:58 a.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

TUESDAY, JULY 22, 1986

Afternoon Sitting





STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)  
VICE-CHAIRMAN: Mancini, R. (Essex South L)  
Bossy, M. L. (Chatham-Kent L)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Laughren, F. (Nickel Belt NDP)  
Martel, E. W. (Sudbury East NDP)  
Morin, G. E. (Carleton East L)  
Newman, B. (Windsor-Walkerville L)  
Sterling, N. W. (Carleton-Grenville PC)  
Treleaven, R. L., (Oxford PC)  
Turner, J. M. (Peterborough PC)

Substitutions:

Hart, C. E. (York East L) for Mr. Morin  
O'Connor, T. P. (Oakville PC) for Mr. Johnson  
Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Turner

Also taking part:

Brant, A. S. (Sarnia PC)

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service  
Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, July 22, 1986

The committee resumed at 2:09 p.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST  
(continued)

Mr. Chairman: We are ready to proceed with the afternoon session. Mr. Brandt has asked to make a statement; so proceed.

Mr. Brandt: Mr. Chairman, I appreciate the indulgence of the committee in allowing me to address it again from a somewhat different geographical position than I addressed it this morning. I would like to take a few brief moments of the committee's time to raise an issue and to explain a position I have decided to take in connection with my appearance as a witness this morning. The point of my statement is to clarify my role and participation as a member of this committee.

As you have indicated before, Mr. Chairman, and as confirmed by the other members of this committee yesterday, it is not uncommon for a member of the Legislature to appear both as a witness and then to sit on the committee before which he appeared. It does not set a precedent and it does not influence the member's impartiality. I would also like to reiterate that I appeared as a witness before this committee purely at the committee's invitation and to assist the committee in fulfilling its mandate.

I would also like to add that I appeared as a witness in spite of my belief that the information I related this morning pertaining to Mr. Fontaine, the former Minister of Northern Development and Mines, would have been better presented by outside counsel. I made that position clear in my statement at the time I addressed the committee.

Yesterday the members of this committee, in deliberating my attendance as a member of the committee, showed no hesitation in accepting my participation or my impartiality in reaching a decision based on the information that was to be presented before us by Mr. Fontaine.

Today, Ms. Hart seems to have changed her opinion regarding my being a member of the committee and this morning accused me of being biased in my opinion and of prejudicing Mr. Fontaine. After this morning's proceedings, the lawyer representing Mr. Fontaine repeated those charges.

I regret any questioning of my neutrality or impartiality in these hearings. I especially regret the implication of the remarks made by my colleague from the Legislature. However, I recognize that my role as a member of this committee has been effectively brought into question and has been compromised by the perception, raised by Ms. Hart, the lawyer for Mr. Fontaine and others, that I will be biased in my views. These allegations, as long as I am a member of the committee, will in turn affect the perceived impartiality of any decision reached by the committee. Recognizing that, I have decided to step down as a member of the committee.



In response to some questions from Mr. Mancini and Ms. Hart, I spoke about what I believe to be the proper action for a minister of the crown. I spoke about the need to ascribe to the highest standards possible so that the minister would not just be in compliance with conflict-of-interest guidelines but would also be perceived to be in compliance with those guidelines.

There is some similarity to the situation today. I regret the inference drawn by some individuals as to my role once I appeared as a witness at these hearings. However, I accept without question that this committee must not only be impartial in its deliberations but must also be perceived to be impartial in its deliberations. I regret that my being a member of the committee brought its neutrality into question for even a brief moment.

This morning I answered some questions about my own personal beliefs regarding compliance with conflict-of-interest guidelines. I spoke at length about the need to be perceived to be in compliance, to do more than the minimum expected, if you will. Those words were not just idle. As much as I believe I have a right to be here as a member of the committee and as a member of the Legislative Assembly, as much as I believe I have the right to listen and then reach a decision regarding one of my colleagues, I also believe the rights and, if you will, the privileges of the committee take precedence over mine. For that reason, I have come to the decision that I have made.

Mr. Chairman, I thank you and the committee members for your indulgence. I will be forthwith stepping down from any further activity on this committee.

Mr. Laughren: I think Mr. Brandt has made the right decision. While the committee had no objections to him being a witness and being on the committee, I think that after this morning's proceedings a number of us felt uneasy about someone being basically a prosecuting attorney and a member of the jury. For those reasons, I think Mr. Brandt has made the right decision.

Ms. Hart: I would join with my colleague in saying I agree that Mr. Brandt has come to the right decision. I regret that it has come to be so, but as my colleague has indicated, several of us were uncomfortable in having one of our members in this position, even though there is no dispute that he could appear here as a member of the committee. When he testified and put the allegations before the committee, it made some of us very uncomfortable that he would then sit in judgement on another of our colleagues. I congratulate Mr. Brandt in coming to the decision he did.

Mr. Chairman: Let me just take a moment to respond as chairman of the committee.

I appreciate that we were caught in a position which some perceived to be unfair. I appreciate even more the fact that Mr. Brandt made his statement and withdrew from the committee. I realize there are two sides to that coin. Mr. Brandt is one who has had an interest in the matter. He is an experienced member of the assembly and one whom I would have considered to be a natural person to assist us in going through these deliberations. I hope we did not cause the problem by inviting him to attend as a witness. In a sense, I suppose we did, but someone had to do that. Someone had to begin the process by explaining what they thought was right or wrong about the situation. Mr. Brandt accommodated the committee by doing so. As with every other process where you try to make this judgement call, it has its good sides and its bad sides, and perhaps this is one of the downsides of it.

I wanted to thank him personally for stepping down this afternoon because I think perceptions were raised--maybe not realities but perceptions--that would have caused us some difficulty, and that was quite a sacrifice for him to make.

I want to thank the rest of you also for doing it the way it ought to be done, so to speak, in this morning's session. It is with some measure of decorum and understanding that we are here to do something which is a little different than what we normally do and that requires us to attempt to be as impartial as we can. We are all practising politicians. We are not some creature that goes and sits in a parliament somewhere, but we are being asked during the course of these hearings to be parliamentarians first and partisan politicians second. I thought we accomplished that this morning and I hope we continue to do that for the remainder of the hearings.

Are there any other comments anybody wants to make? Mr. O'Connor and Mr. Sterling.

Mr. O'Connor: Yes, Mr. Chairman, thank you. I want to join my colleagues in expressing regret at the necessity for Mr. Brandt to step down from this committee. I believe the fault lies with the committee and perhaps specifically with some members who brought into question this morning his potential or possible impartiality. Certainly nothing Mr. Brandt said this morning could have caused a rethinking of his position. Everything he said this morning was a matter of record that he had said previously in the House or other places. He introduced no new information. I feel that perhaps the committee, knowing what he was likely to say and the charges and allegations that had already been made public on a number of occasions, should have foreseen the difficulty that might arise and have precluded the discomfort that he obviously was put to this afternoon in having to resign.

I share with you, Mr. Chairman, our thanks to him for dealing with it and handling it in the way he has, and I commend him for that. I simply must add some regret at the way in which some members, shall we say, changed their attitude towards the decision we had taken as a committee prior to this morning, and changed it for no real reason because he said nothing new or different than he had said before.

Mr. Sterling: I feel very aggrieved that Mr. Brandt has had to step down in this committee because he probably has as much knowledge about the area as any one of us and he probably could have assisted the committee to a considerable extent during the hearings. It is also a very sorry day in terms of the privileges of a member of this Legislature that a member is forced into the situation Mr. Brandt was in this morning. Further, he was asked questions at the time that put him into that conflict position, when he was asked his opinion about the results of what we are to decide in this committee by members of this committee. The particular member who asked those questions knew well, as a lawyer, where her questions were going to lead in terms of prejudicing his position as a member of this committee and being able to sit and discuss a report on this committee. I did not think those questions should be put.

I wish we had had an outside counsel who might have advised the chairman at that stage of the game those questions were improper if Mr. Brandt was to remain a member of the committee. However, having said that, I think we are dealing with a perception issue here. Mr. Brandt stated very forthrightly this morning what his thoughts and beliefs were in terms of the conduct of a



cabinet minister. I think this afternoon he has carried out in reality what he put forward in words this morning.

2:20 p.m.:

Mr. Mancini: I wish to agree with a great number of things that have been said this afternoon in so far as the contribution Mr. Brandt has made and the manner in which he made it to the committee this morning. However, Mr. O'Connor--I will not say members because I want to direct it to him as well as to the other members here--we did invite Mr. Brandt here. We asked him to come before us as a witness and Mr. Brandt agreed.

When we were at the subcommittee meeting, your colleague Mr. Sterling was there. Right at the beginning of the process, it was raised that some of us would feel uncomfortable if Mr. Brandt appeared as a witness and as a member. Right from day one your colleagues, who are here today, raised the matter. It was not something that was brought up this morning by a lawyer, who is a member of the committee. I believe you were referring to Christine Hart. I think you should have directed your comments right to Christine if that was who you were talking to.

I believe Mr. Laughren may have made similar comments earlier in the morning. I do not know whether Mr. Laughren is a lawyer. I will have to ask him after the committee hearings are over.

In conclusion, Mr. Brandt knew the feelings of the members of the committee from the initial subcommittee meeting. He substituted himself on this committee. It is not as if he was a full-fledged member of the committee who was then being asked to resign his initial obligations. He substituted himself, knowing full well that we had already stated that it would make us feel uncomfortable.

Without anything further, I would like to say that he conducted himself in an appropriate manner when he was here this morning as a witness. He has done the appropriate thing by not staying on the committee, and if we erred in any way at the initial meeting when we decided he should be here, then maybe, in retrospect, we could make those conclusions. At this time, I do not want to come to that particular conclusion. I hope we can continue with the rest of the hearings, as we did this morning, in a rational and civil way in treating each other with a great deal of respect.

Mr. Treleven: I just want a moment to follow up on Mr. Mancini's comments. I hope this committee and other committees take this as a precedent in the future. In matters of this type, there is a preliminary briefing done by the committee by someone, whether he or she is a solicitor or someone else who is knowledgeable and whose participation cannot be confused as being partisan.

I hope we have now set a precedent here, or the logic has set a precedent in the future for committees.

Mr. Martel: I sit here chuckling to myself about--

Mr. Treleven: But you are not a lawyer. You are hung up about them.

Mr. Martel: No. I am not hung up about lawyers. I sit here chuckling to myself because if anyone suggests there will not be any partisan positions taken in this issue, he is crazy. For anyone even to advance that is ludicrous

because, try as you might, one only has to listen to various lines of questioning that go on in an appropriate way. The decorum is lovely, but just listen to the questioning as people start to line up either to try to prove a point or to disprove that the colleague might have either erred or not erred. For anyone to come here with this nonsense about some member being impartial or partial to a position is crazy. You delude everyone else out there when you try to present the position that one is coming here and is totally impartial.

All one has to do is go back over this morning's questions and where they were leading, and then one will find out how much impartiality there was. That is the thing that bothers me about the zoo. We always pretend we are so impartial. We hear people say, "We cannot take politics into consideration." The whole place is a political arena. For anyone to pretend that we force someone off because he might be impartial, none of us is totally impartial on this one. We might not be sitting here, or we might not even have to be sitting here if we were looking at it in a straight, impartial, yes or no situation.

Mr. Chairman: That is from the Ignatius Loyola school of law.

Mr. Martel: You can tell me who is impartial here. I do not know.

Mr. Chairman: To conclude this portion of our business this afternoon, when the Legislature opted for a hearing of one's peers, this is what it opted for. It does not have a process attached to it, as does a criminal court. It does not have that style. It is judgement by your peers, and that is what we are going to do.

This afternoon I think it would be useful to spend a little bit of time, since we attempted it yesterday and will again, to go over precisely what is in front of the committee. I have had a chance now to go through in some detail most of the information that has been provided. To be honest, I found it was presented in quite a logical order, as I read it. I have been able to sift it down to not quite a total short list, but what I have done is to put in one folder the relevant documents, as I see them. That is what each one of you has the privilege to do too: to assemble the documents in the order you want to use them and to put them together in a package which makes sense to you as a member of the assembly.

The statement by Mr. Brandt does a good job at putting the allegations clearly in front of the committee. That is the purpose of that exercise, to have a member of the assembly do just that. The other documents that are of use to us are the motion by which the matter is in front of the committee and the conflict-of-interest guidelines themselves. I would say both sets.

I have had a chance to look through the legislation which is in place in other jurisdictions in Canada. My personal version of what is there is that pretty much the same set of rules applied in different ways with slightly different time periods, different criteria and different people who receive documents. In essence, there is a statement of philosophy about what is a conflict of interest and an attempt to identify that, an attempt to provide a practical means whereby a member could conform with that in terms of tabling documents. Each one of them seems to set out a timetable whereby certain documents are tabled, usually with a table officer or some designated person who collects and then subsequently disseminates and makes public those documents. Our guidelines are similar in that effect, even if they are not by means of legislation.



I think it would be useful to spend some time this afternoon going through that exercise, perhaps starting with Mr. Brandt's statement on what are the contentious issues as we heard it this morning and then perhaps spending a little time on what, precisely, are the parameters laid out by the motion that was moved in the Legislature. Then you may want to discuss some of the other aspects of the guidelines themselves.

We may have, by the end of the afternoon, some more information on precise dates on when the new guidelines were issued to the cabinet and other information of that kind. We are attempting to fulfil the committee's expectations that other questionnaires and other materials will be made available. We are encountering a problem with that. For example, to meet one of those requirements, we need Mr. Fontaine to agree to sign a release so the documents can be released. We may encounter a small difficulty there.

Does anyone want to make any further comments on any of those matters? Basically, I think it would be useful this afternoon to try to firm up the terms of reference and what the committee wants to do during the course of these hearings.

2:30 p.m.

Mr. Treleaven: To lead off, will you go back to your original statement in response to my question yesterday morning about the original instructions from the Legislature, because that is all important, about exactly where we are supposed to go. May I paraphrase? I think you said we should not only look at the two guidelines, 1985 and 1971, but also look for a possible or potential breach thereof, and we look at the Legislative Assembly Act and the--there was another act.

Mr. Chairman: The Executive Council Act.

Mr. Treleaven: The Executive Council Act. Can we start off with that? Would you reiterate your understanding, so that we are all reading from the same hymn book, or we can disagree with it, of what we are looking into and the outside parameters?

Mr. Chairman: I will read to you what I consider to be kind of the short list of pertinent documents. I believe they are fairly straightforward in that they are the two guidelines as we have known them, one passed in 1972 and one in 1985. We have copies of the Legislative Assembly Act here and we will distribute those if you do not have them. We have copies of the Executive Council Act as well, which we will distribute to you now. I put to you that those four items would be the matters which are kind of terms of reference for this committee during its deliberations.

While I have read documentation, for example, from the Quebec Securities Commission and other places that is of interest to us and pertinent, this is not precisely within the realm of what we are investigating here. We are looking at the conduct of a member.

The precise wording of the motion is "That the matter of René Fontaine's compliance with the conflict-of-interest guidelines be referred to the standing committee on the Legislative Assembly for review and report to the assembly without delay." It is the matter of compliance that is precisely in the motion.

I told you yesterday, and I will reiterate again today, in this order of priority, that it is referred to a committee of the assembly. He is here as a member of the assembly; so it seems to me that the Legislative Assembly Act and all of its obligations are obviously part and parcel of the process. He was a member of the executive council and that is the reason he was asked to conform to a set of conflict-of-interest guidelines. That seems to me to be relevant as well, though perhaps a bit less.

In order of priority, the first thing would be the motion passed by the House. That is rather clear and straightforward. It is perhaps a little broad, but it is there. Second, named in the motion is the matter of compliance with the guidelines. Those documents are very much part of this process. Finally, the other two documents that you will want to be considering as we go through this are the Legislative Assembly Act and the Executive Council Act. Those are the four main touch points, if you like, for consideration.

Mr. O'Connor: Just on that question, and to assist in developing parameters, if you will, I assume, in speaking of these acts and Mr. Fontaine's former status as a minister and a member, we should not limit ourselves to the exact time frames when he was a member and a minister. I suggest that perhaps we should be allowed to range somewhat beyond those immediate time frames for two reasons.

First, obviously, his ownership or otherwise and his status with various companies and assets is an ongoing process. It extended back past the date on which he was elected a member to this assembly.

Second, I think an historic perspective of these matters is probably necessary. In other words, we cannot simply start at May 2, 1985. We should perhaps be permitted to inquire about when he obtained some of these assets. It may assist in determining what his frame of mind was and whether he is indicating--and I am speculating here--that his defence is going to be on several of these that he simply forgot to list them. The time when he purchased them or came into possession of them and so forth may be important in determining whether that is a plausible or feasible defence.

What I am getting at is that I think for several reasons it may be necessary, therefore, to range back beyond the time frame when he was a member of the assembly or a member of the executive council to assist us in determining what really was going on in his mind. After all, that is what we are after. We are determining not only whether he failed to list certain items--I think that is plain and clear; he has admitted that in a disclosure statement--but also whether there was any intention to go further than that, to use his influence for his own personal gain. That is really what we are after in determining whether there has been a breach of conflict-of-interest guidelines. To that purpose, I think it is necessary to be permitted that range in questioning him.

Mr. Chairman: Maybe it would be useful for me to try to respond, since ultimately I may have to make rulings on stuff like this.

One of the advantages, if there are any, of putting it into this forum is that there are rules, standing orders and all of that, but there is a lot of latitude. For example, none of us tried to inhibit what Mr. Brandt had to say this morning. None of us was inhibited in the questions we asked by the fact that he was a witness in front of the committee. That is the parliamentary forum in which we function.



If push comes to shove on something such as that, I would not be inclined to shut someone down totally, but I would say that person would have an uphill job to establish in my mind the relevance of his actions prior to his time of being a member here. I am not interested in listening to boyhood stories of somebody who became a member. If you think you can do that, that is the parliamentary challenge for you, to try to establish with the rest of us here that this is somehow relevant to what we have.

My judgement is that I would certainly listen to it. I would have to hear you out, but I would have some difficulty determining how that is related to any matter that is currently before this committee. It may seem a little obtuse, but the Legislative Assembly Act certainly applies because he was a member and we are members.

There is no such thing as conflict-of-interest guidelines in many parts of the world, although the private sector has its own guidelines for its employees. For example, if someone was before us and told us wonderful stories of how when he was a young lad he did this and that, it is not relevant. What is relevant is how he performed as a member of the assembly. You may make the challenge of saying, "His background somehow influenced what he did." We cannot get inside somebody's head. To me, what he thought and what you think he thought is irrelevant. What he says is relevant.

When a member comes in front of us and says, as Mr. Brandt did this morning, "This is what I think," he has a right to say that and you have a right to challenge it. You do not have a right, and you will not get a right in here, to say, "I do not believe that is what you thought." You have to take them as being honourable members. What they say is true, unless you can prove otherwise. As you go about trying to prove it otherwise, you have to exercise some discretion.

The parliamentary forum gives you considerable latitude. In exercising your rights in a parliamentary forum, your job is to make what you say relevant to everybody else. That is the challenge.

Mr. O'Connor: May I just respond briefly by saying I agree with much of what you have said. I take some exception with one point, which is I think part of our job is to get to the truth. The truth about how this all came about may lie in attempting to interpret the correctness or otherwise of some of the things Mr. Fontaine may say tomorrow. To a certain extent, we are attempting to judge the witness and to determine whether it is feasible or plausible. For that purpose, it may assist us to be able to go behind May 2 of last year.

For example, if in questioning it comes to light that the purchase of the Golden Tiger shares took place on May 1 of last year and he purchased 50,000 shares of Golden Tiger, it might be argued thereafter that it would be more difficult for him to forget that kind of activity, because it happened in the past so close to the June 26 date when he became a minister, than if he had owned those Golden Tiger shares for five years and had not been involved in any transaction with them and they were something that were there but faded in his memory. If we are going to make judgements on whether he is telling the truth when he says, "I forgot"--and I think that is part of our job--we have to be able to make those inquiries.

Mr. Chairman: In response, I would say you have a parliamentary right to explore whatever you want to explore, if you can make everybody else

or the majority of the people in the room believe that is relevant. Willie Brown had the gist of it all; the rule of 41 applies in here. If there are 80 people in a room and 41 people say, "You are going in the right direction," you are going in the right direction. If you cannot, tough. That is it.

2:40 p.m.

Mr. Treleaven: It was the tracing of assets. I was going to make the same point as Mr. O'Connor. If you have certain assets at various time frames, you cannot cut it off in a backwards way at May 2, 1985. Those assets, the purchase of them, the transfer of them and so on have to have some relevance before May 2 as well as after. I was going to say the same as Mr. O'Connor; you need the right to trace back.

Also, I want you to confirm that the relationship of co-holders of the assets has to be examined. You cannot say we are dealing only with Mr. Fontaine here; you have to deal with other people in relationship to him.

Mr. Chairman: You will get the right to skate on that pond too.

Mr. Treleaven: Thank you, and I trust you are going to be standing on the thick ice.

Mr. Chairman: I will be on the thick ice with a hockey stick. You will notice me.

Mr. Treleaven: Fine, thank you.

Mr. Chairman: Just before we proceed, I remind you that Mr. Brandt appeared this morning as a member of the assembly. He was not sworn in because we do not swear in members of the assembly. They are supposed to be cognizant of their oath. Tomorrow morning Mr. Fontaine will appear. He is not now a member of the assembly. He will be sworn in, just to remind him of the process that is at work here.

Are there any other comments on these terms of reference?

Mr. Treleaven: Mr. Chairman, do you want to recognize for Hansard that Mr. Villeneuve has subbed in now for Mr. Turner in place of Mr. Brandt having subbed in for Mr. Turner.

Mr. Chairman: I would have said it much better than you just said it, but now I do not have to.

Let me lead you through the exercise this afternoon. Let us start with Mr. Brandt's statement this morning. Is there anyone who is challenging any portion thereof of the statement that is in here, or is this kind of accepted as being factual? Aside from any allegations that might have been put in here, is there any challenging of the facts as presented this morning?

Mr. Martel: I thought I would challenge the facts on page 1. I keep being amazed, if I might say so, at the concern by my friends in the middle--that is not in the political spectrum either--about us not having a lawyer. If I was in their position, I would have moved a motion a long time ago. Maybe somebody should teach them to be the opposition. When they continue to harp on all this documentation and they have not moved a motion, I wonder about the validity of the statement. Maybe someone should teach them what it is like not to be the government. They have not learned that yet.



Mr. Chairman: You see what I mean. It is a parliamentary forum.

Mr. Martel: I disagree with that statement on page 1.

Mr. Chairman: I just wanted to give you the opportunity to go through the statement that was made, and if there is any serious consideration, that things which you believe not to be true were presented as facts this morning, this is the opportunity to try to identify some of those for us.

Mr. Treleaven: Yes. I would like to identify on page 2 that Mr. Brandt did clarify these dates of December 31 and October 31 and acknowledged that a relevant date could be September 31. I think we have got to keep that in mind all along, at least until it is established by someone else that those dates are important and unestablished.

Mr. Chairman: Okay. Ms. Hart, you had some questions.

Ms. Hart: It is not really a question. It is just that we have not yet heard from Mr. Fontaine. I would be reluctant to say I accept all the facts in here as true.

Mr. Chairman: I am not asking you do that. I am just saying if--

Ms. Hart: I just want to clarify that I am quite prepared to accept what Mr. Fontaine says to be the fact and I cannot do that until after he has testified.

Mr. Chairman: Okay.

Mr. Mancini: I just want to concur with my colleague because what Mr. Fontaine may say might put these facts in a different light. While the facts may be the same, the circumstances may prove to be somewhat different. I would prefer also to wait until we hear from Mr. Fontaine.

Mr. Chairman: Maybe I should clarify it just a bit. Mr. Brandt was asked to appear as the witness who would lay before the committee the allegations of wrongdoing, so to speak, or alleged wrongdoing. I am just trying to ascertain to my knowledge that it was a fairly accurate portrayal of questions that had been asked during question period over a fairly lengthy period. I believe he did touch on all of the ones that I am familiar with, questions that have been raised about documents and transactions.

Let me also draw to your attention another problem that is beginning to trouble me slightly. We did include in the package all the newspaper reports, for example, that anybody had thought of. A newspaper report is not exactly, forgive me, court testimony. It is a reporter's version of a conversation, and a news story is what that reporter saw as facts. There is a little interpretation there. It is not quite gospel truth. But we presented them to you because members had asked for newspaper accounts of various stories, and they have been used in the Legislature.

We may at some point encounter a bit of difficulty if there is a lot of use of newspaper stories as part of the critical decision-making process. Again, with a lot of the material I went through during the noon hour where various assets are listed, I believe those to be very factual presentations of who owns what.

It does not necessarily follow that they are of great interest or will make a great deal of difference in the course of our deliberations here; some would, some would not, and so would a newspaper story if it is accurate. I caution you that if you want to make a story in a newspaper central to your line of argument, we had better have something a bit more than just a newspaper report.

Mr. O'Connor: On that point, what can be done, I presume, with newspaper accounts is to question the witness who was allegedly quoted or reported upon. If he or she takes exception to whatever was said, we can always call the reporter. There are many ways of verifying the reports that have been put in newspapers.

Mr. Chairman: Are there any other matters that arise out of Mr. Brandt's statement before the committee this morning? Is everybody reasonably content with that?

Mr. Martel: If I might raise a point, and I raised it earlier this morning, I do not know how we get at the comments made by the member for Brant-Oxford-Norfolk (Mr. Nixon) concerning what transpired in cabinet, based on what apparently Mr. Fontaine has said with respect to FMAs, without involving the Premier (Mr. Peterson).

What we have is everybody implicated. What worries me is we have the Minister of Natural Resources (Mr. Kerrio). I do not know what was said in cabinet. I do not know where we are going to get at it, if it is possible, but was it raised in cabinet who pushed the FMA? Apparently, the Premier set it aside. That is in this statement. I do not know how to deal with it. Was the Minister of Natural Resources sitting at such a meeting when the Premier shuffled it aside and said, "No, we do not want to deal with it"?

I am not casting any aspersions on anyone. I do not know how, with cabinet solidarity, we get at the statement, not raised by any of us but raised by the former minister. Maybe somebody can help me on how we get at whether it is factual or not.

Mr. Chairman: The first thing we would have to recognize is that this is a very powerful group of folks in this room, but I do not believe we are going to get cabinet to roll in here and spill all its secrets to us either. If you want to pursue that line of questioning, you should understand it is a short road.

As to getting documents from cabinet, no one has done that terribly successfully. Getting various cabinet ministers to parade before you and tell their innermost secrets has not been a popular song here, and it will not be this time either. So there are limits to that. It is one of those occasions where, if a member of the cabinet gave an interview to a reporter where he said, "This is what happened in cabinet," it is possible that you could explore that somewhat. But it also comes down to, in my view, if you wanted to establish that was the truth, you would need more than one person to come before you to testify, and I believe that would be rather difficult to do.

2:50 p.m.

Mr. O'Connor: On that point, surely if questioning Mr. Fontaine indicates that the gist or the text of the story is accurate, that occasion did arise in cabinet, the Premier did say what he is saying he said and that is all we are left with, that is the best evidence we have before us, we are



obliged to take it. If the Premier or somebody else in the cabinet felt that was not true, then it would be up to them to come before us and say it is not true. But if we are left with one piece of evidence, that is it; we have to accept it. It is uncontroverted at that point.

Mr. Chairman: It is your pond and your skates.

Mr. Martel: I do not have my hockey stick.

Mr. Chairman: Are there any other comments? As we go through it this afternoon, I think it would be a useful exercise to see where the pitfalls are so that there will be no surprises. Do not have any fantasies that the cabinet will appear and tell us everything that has happened in the past year. That will not happen. Documents will not be produced.

We have been met with open arms. When we asked for information on things that were not really cabinet documents, so to speak, which eventually became public notices of letters and files of this, that and the other thing, the Premier's office has been co-operative. Those documents have been presented to us. We are asking for more documents of that kind and we anticipate that we will be met with a similar response.

One thing that you should be aware of is that the questionnaire that was used at the meeting of the standing committee on public accounts was vetted. That is to say, legal advice had been sought about what could be tabled with the committee and what could not, and the committee accepted that. You may want to do the same kind of thing.

Mr. Treleaven: Could you lay out the rest of the week for us as you envisage it at this point?

Mr. Chairman: I see it very much the way the steering committee saw it. We had a witness today who presented one side of the story. Tomorrow we will hear from Mr. Fontaine, who will be allowed to reply to that and to provide any other statement he wants to make. The committee will have an opportunity to question him, at length if you wish. After that, it is the committee's decision as to whether it wants to seek further documents, call further witnesses or deal with the matter at that time.

Mr. Treleaven: Do we make those decisions on Thursday?

Mr. Chairman: I am guessing, but I would say Thursday is probably the earliest time that will happen.

Mr. Treleaven: Is there any chance of Mr. Fontaine going over from Wednesday into Thursday and/or Friday if the committee is not through with him on Wednesday night?

Mr. Chairman: I have been here for a little more than a decade. I have seen committees talk to people for long periods of time. Frankly, I am not anticipating that it will be much different from what happened this morning, that a former member of the assembly will come before us and make a statement and members will have an opportunity to question him. I would guess that you would take a somewhat longer period of time in questioning him than you did Mr. Brandt this morning, but I think it is not unreasonable to suggest that we would be able to finish that tomorrow.

You would always retain the right to recall people if you want to do that. On Thursday we would entertain deliberations about whether we have heard enough evidence or we want to hear more. If we want to hear more, we have indicated who might be called and how we would go about that. We would require a little bit of time to give them notice and to gather documents and things like that, but I think we have provided you with a reasonable time frame in which to proceed.

Mr. Treleaven: What do you contemplate taking place on Friday?

Mr. Chairman: On Friday we may well be writing a report on this matter or we may decide that we have listed all the witnesses we want to call in the month of August and identified all the documents we want produced by then and we may not have a need to sit on Friday.

Mr. Mancini: In my view on how the hearings should proceed, if we complete our questioning of Mr. Fontaine on Wednesday, I hope we can spend an extra hour deciding on whom we wish to see on Thursday and Friday. It does not appear to me to be a good use of our time to come back on Thursday morning without having made any plans to see anyone on Thursday. If we make some decisions on Wednesday, phone calls can be made possibly some time Wednesday or first thing Thursday morning to the individuals we wish to see on Thursday late morning or afternoon. If we keep delaying this, we are not going to make any progress at all.

Mr. Chairman: That is quite possible.

Mr. Martel: I have two more points regarding the factualness of the statement on page 11. Mr. Brandt says, "For instance, I have not broached the various directorships...." Is it possible for us to get a list of those various directorships which Mr. Fontaine held so that we will know?

The second one is on page 13. We may have to decide this later on. There is a statement there too that worries me: "It is inconceivable that Ms. Eberts did not go into detail with Mr. Fontaine." We have to get some clarification of that statement as well. I do not know whether she advised Mr. Fontaine on what he should or should not do, but you were asking about things in the statement that bothered people. Those two things bother me.

Mr. Chairman: Let me respond to those two points. I do not have a list of directorships--the wording is rather awkward here--from which the former member did not resign, but I do have a list of directorships he held. We have those documents. I read them at the noon hour today. We have a list of all the companies in which he had an interest, everything that was declared. That is in the package.

Mr. Martel: Does anyone know the item number?

Mr. Chairman: I have it here.

Mr. Treleaven: I would like to know where that is also.

Mr. Chairman: It is in bundle 2, which consists of disclosure statements, identification of various corporations, positions Mr. Fontaine held on those corporations, who were partners in those firms, all of that.



The second point Mr. Martel raised is something you may want to pursue. I do not know from whom Mr. Fontaine sought legal advice in the course of preparing this material. He will be here tomorrow, and it seems to me that is quite a logical question to put to him when he is before you. It is difficult. For example, if I were making this kind of a disclosure, it would not take very long. I do not own stocks, bonds or a lot of money. I own a house, or a trust company in London and I own it, to be precise. I now own a car. The credit union is out, and it is mine totally, rust and all.

It would not take me very long and I would not require a lawyer, but there are a lot of people, particularly in the business world, who have a lot of investments and would need legal advice to fill out this kind of declaration form. The only person who can tell you whom he consulted in the course of preparing these documents would be Mr. Fontaine himself. When he tells us who he used, that is about as good as we can get.

Mr. O'Connor: I have a technical question. I understand, and perhaps you can confirm, that Mr. Fontaine intends to give his statement tomorrow in French. You will have instantaneous translation, of course, but I am wondering if the written version could be provided to us translated into English. Do you know whether that will occur?

Mr. Chairman: We will try to do that by the following morning, or conceivably by the latter part of the afternoon. That is about as quickly as we can do that.

Mr. O'Connor: I do not mean from Hansard. If he is going to read from a text, as did Mr. Brandt, perhaps he could provide us with a copy of it, while still having the right to deviate from it as he sees fit. It would at least assist us in commencing the questioning, which has to start right after he finishes.

Mr. Chairman: We could ask, but I do not know about the committee's right to insist. The act is written in a rather unusual way and says in a committee or the House, one may use either official language. The obligation is on the committee or the House to provide the translation or interpretation services.

Mr. O'Connor: I am not questioning his right to do all that.

Mr. Chairman: If he wants and is prepared to do that, okay. We have just done some translating for the committee, and this is not as quick and easy a job as it might seem at first. If he has it already done--

Mr. Treleaven: If we do not have it, we can do one of two things. Mr. Villeneuve can ask all the questions and get fed copious notes or we can simply adjourn at that point and resume at some future date.

Mr. Martel: When you ask your questions, Mr. Fontaine should do exactly the same. He should adjourn and have all the questions translated into French for him so that he can answer them. Get off the pot; you are being childish.

Mr. Chairman: That is a parliamentary term. We have to deal with Sudbury language and Oxford county language; we handle it.

Mr. Martel: You have to deal with nonsense all the time.

3 p.m.

Mr. Treleaven: I did not realize they were so idiotic north of the French River.

Mr. Chairman: "Ideologues" is what you meant. Are there any other questions on Mr. Brandt's statement?

Interjections.

Mr. Chairman: You were very good this morning and you are destroying your entire reputation this afternoon.

Mr. Martel: I am not trying to, but some people are provoking me.

Mr. Chairman: So easily provoked.

Mr. Martel: No.

Mr. Chairman: Is there anything else on Mr. Brandt's statement that you want to do now?

Mr. Sterling: I would like legislative counsel to break down the sections of the conflict-of-interest guidelines that the various ideas Mr. Brandt has put forward in his statement would fall under. If there is some way to itemize these conflict-of-interest guidelines, I would like that as well so that when we are talking with Mr. Fontaine and when we are considering these issues, we can continue to keep them categorized in some way. Have you done anything on that yet?

Ms. Madisso: You may not have noticed, but on the first morning I handed out something that listed Mr. Fontaine's contentious corporate holdings, set out the facts of relations with them and then raised some conflict-of-interest questions, not all by many means, but many that were suggested in the House. Perhaps that is a beginning for you. I do not know whether I can do what you just requested by tomorrow morning and have it typed, Xeroxed and ready to roll. I can try.

Mr. Treleaven: I point out that I think there may be corporations besides those that show up. I know you have a disclaimer that says it is a summary of facts taken from Hansard and so on.

Ms. Madisso: Yes.

Mr. Treleaven: There may be some other corporations or partnerships that come to light. Some of these do not have "Ltd.," "Inc.," etc., to indicate, as you say, apparently a private company. There are various things you are not sure of. For example, it is my understanding Paladin Petroleum is a corporation and you just said "Paladin Petroleum." I am saying you have done the best you can from the public records and Hansard, but that might not be all-inclusive.

Ms. Madisso: I would not be able to get this information for you for tomorrow morning in any case.

Mr. Sterling: There is one other thing. I was wondering whether we should contact Mr. Levesque and ask him whether he would like to come before the committee. There appears to be a bone of contention among Lecours Lumber, Levesque Plywood and United Sawmill. I do not yet have the story straight as to what the power struggle is in that situation.



Interjection: Or whether it is relevant.

Mr. Sterling: Or whether it is relevant.

Mr. Chairman: I ask you to withhold putting motions to call witnesses until the committee has had the opportunity at least to hear Mr. Fontaine and to decide as a committee that it wants to hear further witnesses. At that time, we have drawn up a suggested list of who it would be appropriate to call and you may wish to add to or delete from that list or whatever. At the point when we want to hear more witnesses, we would be happy to entertain motions about who specifically they might be. Is there anything else on this matter?

Shall we have another round on the motion that puts it before the committee or is it reasonably clear? Are there parts of the Legislative Assembly Act that you want explained or highlighted?

Mr. Treleaven: Sections 10 and 11 are probably the most operative sections. Perhaps I have a different copy that--

Mr. Chairman: For your reference, my personal thinking is that sections 10, 11 and 12 are the three sections of the act you might take a look at and determine whether they should apply in this case. They essentially deal with all matters that might come under a conflict of interest and how they would be handled.

Any word on documentation? Do we have it? Any further business before the committee this afternoon?

Mr. Sterling: Again, in trying to deal with this in the forest management agreement area, the people from the Ministry of Natural Resources yesterday would have us believe there was no great advantage to a forest management agreement, other than the amount that was being paid to the forest management company, Hearst Forest Management, which was this \$45 million or \$50 million over the next 20 years. The right to cut an acre of timber softwood could not be quantified. I find that hard to believe. There has to be some value attached to the long-term right to have an assured supply of wood down the road. I think we need an evaluation of that.

Mr. Chairman: I had some consideration and a bit of discussion with a few people on that last night. I guess the wonderfulness of a parliamentary committee is that we are all free to hear whatever we want. Frankly, I did not hear them say that. They were quite close to that, but not exactly that. What I heard them say is that it would be difficult for them to provide you with an accurate projection of value. I think I would agree with that. I do not know whether there will be a drought next year and the trees will all fall to the ground or what, but I think we can state the obvious, which is that there is considerable value in being part of an agreement which, in effect, provides you with as much security to operate as you can get in that business.

It would be akin to giving you the rights to an oil field. We do not know or cannot guarantee that the price of oil will be really valuable next year, but it is a reasonable assumption. If you provide them with access roads and things such as that where they can withdraw their product from the ground, there is value in that.

There are various levels of familiarity amongst the committee members here. Some of us have never seen an FMA before. I sat next to Jack Stokes in the Legislature for four years. I know more about silviculture than I ever wanted to know in my life. It was like a four-year crash course on it. Those of you who did not sit next to Jack for those four years will not have the advantage of all that wisdom, but I do not deal with forest management agreements in Oshawa a lot.

We could provide you with expert witnesses. We could go to work on drawing up a list of people who might be considered in that category and we would attempt to do that. If you want more witnesses and you say you want witnesses to advise us on FMAs, we could find some people who can give you not cost projections and not cost analyses, but who may be able to explain it to you from a slightly different perspective than an MNR employee.

Mr. Sterling: I would like to have some idea of what 42,000 acres means. We are talking about a 100-kilometre by 120-kilometre area, which is a fair chunk of ground.

Mr. Martel: Why do we not take a plane and we will fly over?

Mr. Sterling: That will not tell me what it is worth. I have no idea.

Mr. Chairman: No, but it would be a nice idea. Give him credit when he comes up with a nice idea.

Mr. Martel: You can come to the north and see it.

3:10 p.m.

Mr. Sterling: The second thing is--I am looking at legislative counsel again--if the agreement says nothing or just does not give the people who are Hearst Forest Management Inc. any control over what is happening underneath, I still do not understand the sense of having the agreement to begin with. If you are agreeing to nothing and you are gaining no power, there has to be an obligatory part of the agreement and there has to be a benefit part of the agreement. I want to know what that benefit part to that agreement is and how they control a minority interest in that corporation. I was not getting the answer with respect to what MNR employees were saying to me. I would like you to look at--

Ms. Madisso: How MNR controls the component companies of Hearst?

Mr. Sterling: No. I am saying they have an agreement with an FMA company. What rights does that FMA company have to control the people in their area? If Levesque is a third owner of the FMA company and the other two decide to lean on it, what kind of recourse will Levesque have? Can they tell them to go fish?

Mr. Martel: I do not think that has anything to do with this inquiry, quite frankly.

Mr. Mancini: That is right.

Mr. Treleaven: It certainly has.



Mr. Martel: No, it does not. The forest management agreement is signed by some holding company. The influence that you are looking at, if that is what you are looking at, is whether the minister pushed to have the forest management agreement approved. You know that one of his companies is involved. That is the issue. How the internal machinations are going to go on seems irrelevant to me except that the minister might have been using--and that is the conflict that we have to decide--his influence to gain that FMA.

How the FMA will work internally among two, three or four companies is not the issue. I think the issue is whether or not influence was used to get it. Regardless of how it works inside, if that is what we are looking at, some companies are going to benefit by it. I am not interested how they kill each other.

Mr. Chairman: Let me make this distinction before we proceed with this. I think that this is a legitimate question for members to try to have an understanding of whether this is something of value, great value, no value or whatever. To that extent, I believe we should try to co-operate with people and call an expert witness or two, if you want at some point to go through it.

It would be very difficult to deal with a forest management agreement that is not yet finalized. We cannot go through the hypothetical exercise of "what if" on a document that is not yet in place. That document could be changed substantially if the report, which is now being prepared, makes recommendations in that regard.

If you want a bit of background on how existing FMAs work, that could be provided to you. I do not know that all the committee needs that, but the problem I think you would run into right away is that most of them are with one company.

Mr. Sterling: This is the first combined one.

Mr. Chairman: Things are at a level where the FMA is between Ontario and a company. The checks and balances in there are who holds the licence, who approves the road, who gives the grant, that kind of stuff. There is a lot of negotiating in the process.

This will be the largest and the first one, to my knowledge, that is being done with more than one operator, so to speak, on the ground. We may never be able to answer your questions until this agreement is concluded and in practice. I do not want us to embark on an exercise that we cannot fulfil.

Mr. Mancini: It is my recollection that Mr. Sterling was in charge of the Provincial Secretariat for Resources Development in approximately 1983. Is that correct, Mr. Sterling?

Mr. Sterling: Yes, I was Provincial Secretary for Resources Development.

Mr. Mancini: I am assuming, Mr. Sterling, that because of your cabinet portfolio at that time in charge of the resource secretariat, which was made up of the Ministry of Natural Resources, you would have had some input and some information would have been made available to you as the superminister at the time about these FMAs that your colleague, Mr. Pope, went to Timmins to announce.

Mr. Sterling: I did not know anything about the particular details of any FMAs.

Mr. Mancini: I think it is important for this committee to get all the information that we need to ensure that we can make an appropriate decision, but not for us to go on a fishing expedition to try to get more witnesses in before us to discuss an FMA that was thoroughly presented by three senior staff people of the Ministry of Natural Resources--

Mr. Treleaven: Oh, come on.

Mr. Mancini:--yesterday, three people who had a lot to do with the negotiations and who I think answered the questions pretty forthrightly, and not to call other witnesses at this time to re-explain the FMA, when probably we have had the best witnesses, and to continue to try to find out how much the FMA is worth. I think the FMA is worth as much today as it was when Mr. Pope announced the FMA co-operative. Whatever benefit Mr. Pope wanted to give at that time is probably the same benefit that will go to these same three companies we are talking about right now.

The history of the FMA is very clear. It is in volume 3, our second package. It is all there for us to see, in conjunction with the testimony we have had. I say, fine, let us get the information we need, but let us not forget that the FMA has not been granted. Let us not forget that Gordon Baskerville, a dean at the University of New Brunswick, and Wilfrid Spooner, a former Minister of Lands and Forests, have taken this situation out of the political realm, because the people who wanted to make the political decision in 1983 to give the FMA are now against a new government making the same political decision.

Mr. Chairman, I am going to have a difficult time supporting you if we are going to use the FMA as a fishing expedition; it will be very difficult.

Mr. Chairman: Do not fish in the forest. The fish are all in the water.

I will take it at face value that this is a serious attempt to get information. We think we can give Mr. Sterling and anyone else who wants it the opportunity to talk to experts in the field, who will fill them in. That is about as far as we can go with that, I am afraid. Then if you want to move motions subsequently to call witnesses, you will have a better knowledge on which to move those motions.

Mr. Bossy: On this business, and I believe Mr. Sterling is pursuing the value of the FMA, there is a question in my mind that there were three key players originally. If it was of such great value, why would Levesque not want to be part of it?

Mr. Sterling: It may not be of value to them, but if the other two partners are in cahoots with each other.

Mr. Bossy: If it was of such great value, to the tune of millions of dollars, why would Levesque back out and not be part of it?

Mr. Treleaven: This is exactly the point. Mr. Bossy is raising the issue, how can it be of value? It depends on the ownership of the corporate holdings. If they are held two thirds-one third, there is control of the



corporation that is negotiating the FMA with the crown. Unless we can get to the facts of who holds the corporate ownership, who owns the voting shares, who controls the master company, as I think it was called by the people yesterday, Hearst Forest Management Inc., unless we can discover what their powers and rights are, who holds the ownership, who has control, unless we can get into that, the whole exercise becomes a farce.

Mr. Chairman: Let me stop you there. I hate to say it in quite such blunt terms, but you have it in your hot little hands. I can give it to you; I cannot make you read it. You have that documentation. If you want to read it, read it. If you do not want to read it, do not make me read it to you.

Mr. Treleaven: No, Mr. Chairman, it is not in our hands. The shareholdings are not there. Who owns the corporation? You can discover from these charters its objects and you can discover who incorporated it; you cannot discover the day after incorporation who the shareholders or the directors are and what rights and conditions the shares have to them. Who has the stick? Who has the control? You cannot discover that from these documents. All you can discover is the incorporation details.

3:20 p.m.

Mr. Chairman: I appreciate your argument. I would also put to you that what a private company does in terms of its control and what powers it might have are matters that are not exactly public knowledge. We would have some difficulty getting that for you.

Mr. Sterling: It is 50 million public dollars that these guys have--

Mr. Chairman: Fifty million public dollars. What did Minaki cost?

Mr. Mancini: It was \$52 million.

Mr. Chairman: It was \$52 million, wow. Let us get serious here for a minute.

Mr. Treleaven: I think Mr. Sterling is being serious with his \$50 million of public money and I think that is what we are being asked to do, to inquire into it.

Mr. Chairman: The problem you are creating for me is that a civil servant came before us yesterday and provided an estimate of how much government money would go into the operation of this forest management agreement. He did so with some reluctance, but he gave you what you asked for, the ball-park figure. If the FMA were in operation, there would then be public documents that we could get for you that would examine this. I thought he gave you a reasonably good background as to how FMAs function. They do not know exactly how this one will function because they have never quite done one this way before. The terms and conditions may be somewhat different.

We can give you lists of people, lawyers and others, who work in the field, who would be able to brief you on how others have functioned. We could give you lists of people who would be expert witnesses in the field. The committee may decide it is worth while calling those witnesses. We can do that.

Mr. Treleaven: Those were not witnesses yesterday; they were people who came to brief us, technically in the same manner as John Eichmanis did.

They were not witnesses and they were not sworn. We declined to ask them various questions about these corporations because they were not witnesses. Therefore, I hope nobody is under the impression that they took the place of witnesses, giving us testimony on this forest management agreement, the draft agreement or the corporations involved.

Mr. Chairman: No. No one said that.

Mr. Treleaven: That is right. We need somebody else who is either an expert--

Mr. Chairman: Let me put it this way. You say "we need." If at some point you actually want to have an expert witness brought before the committee, we can try to locate people in that field who might be considered expert witnesses. You will then be able to move a motion saying that this witness be called before the committee. If the committee decides it would like to hear that witness, it will hear that witness; if it says no, it will not. It is as simple as that.

Is there any other business to transact this afternoon?

Mr. Sterling: Is the legislative counsel going to look at that FMA for me and tell me what control this company has over what happens on that land? That is what I need to know. Basically, what control will Lecours and United have over Levesque? If they are in disagreement, that is what I have to know.

Ms. Madisso: Mr. Sterling, I will be in contact with one of the ministry lawyers and basically I will relay to you his description of how it works because I am not expert enough in the area. I will have to get that person--

Mr. Chairman: Is that acceptable? We can do that.

Mr. Treleaven: This was of particular interest yesterday because the gentlemen from the Ministry of Natural Resources confirmed that one of the people with an existing cutting contract would have kept cutting regardless of negotiations and regardless of troubles between the master company, if you will, and the crown. That did not affect the existing cutting contract and the company that had it. Therefore, somehow there is confusion in my mind as to the relationship between the cutting contract and the master contract.

Mr. Chairman: Perhaps I can clarify that just a touch. The FMA is not yet in force; so if they have a licence to cut timber in the bush now, they can certainly continue to do it.

Mr. Treleaven: Speaking not of this FMA, but any FMA, they said they were not concerned about the makeup of the master company, if we can call it that. They deal with them independently, the people cutting and the people under the FMA, but there must be some relationship between the two.

Mr. Chairman: We will try to provide you with any information you want. We will put you in contact with experts in the field, lawyers who are practising with that. That is as good as you are going to get on this one. We cannot tell you how an agreement that is proposed and not yet adopted is going to work until that agreement is finalized. There is no way we can do that. We can tell you how existing contracts are working.



Mr. Sterling: We have a draft agreement.

Mr. Treleaven: We have a draft agreement.

Mr. Chairman: We have a draft agreement that you can look at, but I cannot have staff engaged in hypothetical arguments over--

Mr. Treleaven: It is not hypothetical because there is an existing corporation, Hearst Forest Management Inc., which was negotiating. It has shareholders and we believe that either two, three or four other corporations are the shareholders in that master company. There is nothing theoretical there. They are now negotiating a contract with the crown, with somebody else. There is nothing theoretical in the ownership, the share structure, and who controls that master company through its shareholdings.

Mr. Chairman: Yes.

Mr. Treleaven: I would like some of these answers. Who holds control of those?

Mr. Martel: Does that determine whether there is a conflict of interest or not?

Mr. Treleaven: Very much so. Who was the owner of the various shares in the--

Mr. Chairman: All right. Let me stop you there. We can try to help you determine that information. If you want the committee, as a whole, to entertain that at some length, you will have to find a way to introduce a motion where the committee says yes or no, that is a reasonable route to proceed, calling witnesses and getting further documentation. I am going to caution you there. It is not our business as a committee to sit around while somebody on the committee picks up all the information he or she thinks is pertinent. You have a right to put motions in the committee and you will get your opportunity to do that.

Mr. Laughren: I think there is more to this than you will ever know. I think it is more serious than that. He is questioning the whole logic of capitalism.

Mr. Chairman: Is there anything else that you want dealt with this afternoon? We stand adjourned until tomorrow morning at 10 o'clock.

The committee adjourned at 3:28 p.m.

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M-17

REVISED

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

WEDNESDAY, JULY 23, 1986

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Dreaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossey, M. L. (Chatham-Kent L)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Laughren, F. (Nickel Belt NDP)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Johnson

Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Turner

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

ERRATUM: Issue M-15 should show Mr. Brandt (Sarnia PC) as a witness and as a substitution. For issue M-16 he also appeared as a substitution for Mr. Turner (Peterborough PC) in the earlier part of the sitting.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, July 23, 1986

The committee met at 10:07 a.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST  
(continued)

Mr. Chairman: We are about ready to proceed. The schedule for this morning is that Mr. Fontaine will appear as a witness. He will make his statement. We will then entertain questions from committee members. At the conclusion of that, whether it is around noon hour or later this afternoon, the committee will have some further organizational work to do. Are we ready to proceed?

Mr. Sterling: Yesterday we had Mr. Brandt appear in front of this committee. After reading reports in the press as to the role of the member of the Legislature and how he conducts himself, I was somewhat distraught.

Yesterday morning Mr. Brandt said in his opening remarks: "I am appearing today as a witness purely at the request of this committee. It was their belief that as the first member of the Legislature that broached the former minister's ownership of Golden Tiger shares, I should present a summary of the facts that this committee has been charged to investigate.

"It is my personal belief"--this is Mr. Brandt--"that such a summary could have been done and should have been done by an outside counsel, who could have devoted himself fully to the task of organizing and presenting the pertinent information...However, to assist the committee, I will give a short summary...." Then he carried on.

We have put Mr. Brandt in a terrible situation. Yesterday we heard members of the Liberal caucus indicate that Mr. Brandt was biased or that he was not unbiased, etc. It leads me to the conclusion that there has been an impression left by the Liberal members of this committee that anyone who accuses Mr. Fontaine or questions him in a tough manner will be deemed an accuser of Mr. Fontaine.

As members of the Legislative Assembly, Mr. Brandt or I or any other member of this committee has every right to ask questions of conduct of Mr. Fontaine. It is not only a right but also a duty of each and every one of us. I feel the privileges of Mr. Brandt were breached by the imposition of this committee on him in placing him in the witness chair.

That is past history. What I want to do at this time, before we go further in the proceedings to deal with this matter, is to request this committee to retain outside counsel who can put forward the questions, so they will be deemed to be put forward in an objective and fair manner to Mr. Fontaine and so no other members of this committee will be placed in the position Mr. Brandt was put in yesterday.

Some people might argue the fine distinction between witness and member of the committee. I am afraid the impression has been left out there in the



public that it is not our duty to look into the conduct of Mr. Fontaine. I very much take issue with that and, therefore, I request most earnestly that this committee reconsider its decision to hire outside counsel.

Mr. Chairman: I do not want to preclude debate on this, but before we get into it, I want to put this to you. We have considered this matter on more than one occasion, and I am prepared to hear brief statements on it this morning.

If it appears you want to be substantive, however, that is, move motions, entertain debate and go on, I point out to you that in ordering the committee's business, you have invited a witness here this morning. I consider that to be a substantive motion and I ask you to withhold the motion until we have heard the witness this morning and then proceed to do that.

I will entertain some brief discussion about that, but if it appears to me we are into a substantive argument, I am going to make a ruling that we will not hear the motion until we have heard the witness.

Mr. Martel: In courtesy to the witness who is here, the fact that we asked him to appear and the fact that we will have time this afternoon to discuss this, I feel we cannot change what is going to happen this morning. We can get into a long harangue about whether we should or should not, but it will not change anything. We could not possibly get counsel today, if that is the way the committee eventually voted, if a motion was presented.

We have a witness and we are going to be sitting later this afternoon after the witness has completed his testimony. Let us discuss it then and let us proceed with the matter before us, which is Mr. Fontaine's opportunity to present his evidence.

Mr. Mancini: I will withhold any comments I wanted to make about Mr. Sterling's statement. I agree with you, Mr. Chairman, that we ordered our business today well in advance and we asked Mr. Fontaine to be here, and he is. We should give him the courtesy of being allowed to make a statement.

Mr. O'Connor: Nothing that might have happened could have made the case for needing outside counsel better than yesterday's events. On July 9, we entertained a lengthy debate on this. In looking at Hansard, I made a number of points for the retaining of outside counsel. Yesterday's events have borne out most of my comments. It is fundamentally necessary for the sake of Mr. Fontaine, who is here before this committee in the nature and fashion of an accused person, that the evidence be presented in a straightforward manner according to rules of evidence and that he be given that kind of protection.

Further, there is another committee examining a very similar situation to the one before us. Again, the parallel is drawn to that of Mr. Brandt in that a member of the House initially raised accusations, has been permitted to make those accusations before the committee and has been permitted to remain on the committee with no difficulty or criticism. That has proceeded smoothly. The one significant difference is that committee has retained outside counsel to act in the role of accuser, to act in the role of the person who is presenting the evidence, thus relieving the member of that role and the perception that he is the accuser.

We got into yesterday's difficulty with Mr. Brandt because we did not have outside counsel. I think it is all the more necessary now to delay these

proceedings and retain outside counsel before we go any further. Accordingly, after discussion, I will be making a motion in that regard.

Mr. Treleaven: I agree with Mr. Sterling and Mr. Martel that we carry on since we have a witness in front of us. If you, Mr. Chairman, as chairman, attempt to stop a member of this committee from making a motion at any time, I will challenge your authority to do so. I do not believe you have the authority to foreclose any member of this committee from making any kind of motion at any time.

Mr. Mancini: He did not say he would.

Mr. Chairman: Am I at liberty to proceed with the business as ordered?

Mr. O'Connor: As I indicated, I wish to make a motion.

Mr. Chairman: I have asked you to withhold that motion until such time as we have had due notice and we have dealt with the business as ordered by the committee.

Mr. O'Connor: I do not think you should preclude me from making my motion.

Mr. Chairman: Make the motion.

Mr. O'Connor: I will.

Mr. Chairman: Mr. O'Connor moves that this committee retain and instruct private counsel for the purpose of presenting to this committee the evidence with respect to the matter of an alleged conflict of interest of Mr. René Fontaine.

As I ruled, the motion will be dealt with this afternoon, as soon as we have dealt with the business as ordered by the committee previously.

Mr. Treleaven: I challenge that ruling.

Mr. Chairman: The chair's ruling has been challenged. Is there a motion to uphold the ruling of the chair?

Mr. Mancini moves that we uphold the ruling made by the chair.

Those in favour of the ruling? Those opposed? The ruling is upheld. We will proceed with the witness.

This morning we have before us Mr. Fontaine. I will explain for members of the committee and members of the media who are present that we will swear in the witness this morning because he is no longer a member of the assembly. This is just an indication of what does exist, that witnesses before a committee are expected to provide testimony as they would in a court, so we are asking the witnesses to do so under oath.

Mr. Fontaine sworn.

Mr. Chairman: Mr. Fontaine has counsel with him this morning. We have explained to Mr. Fontaine and counsel that, as always, he is at liberty



to have someone with him to advise him, but the role of the counsel in this type of proceeding is to advise the witness, not to be a participant in the proceedings.

Mr. Pratte: With your leave, we have printed versions of the statement, which may be of assistance to members.

10:20 a.m.

Mr. Chairman: Just before we start, I have had a plea from the people who are doing the simultaneous interpretation that this is a new form of interpretation for them. They are having a little bit of difficulty, in particular when people speak quickly. I indicated to them before we began this morning that occasionally in parliamentary forums people do speak quickly. I can remind you to try to assist them, but there really is not a great deal we can do.

Mr. Fontaine: Good morning, Mr. Chairman, and members of the committee.

After listening to Mr. Brandt yesterday, as well as in response to further allegations of impropriety that were made against me following my resignation on June 26, 1986, I want to add the following to the statement I made to the House on that date.

Shortly after my election last year, I was told that Mary Eberts, a lawyer hired by the Premier's office, was going to interview me with a view to assisting me in complying with the guidelines on conflict of interest. An appointment was made for late June 1985. I asked my personal accountant from Kapuskasing, André Gagné, to attend the meeting with me, which he did.

During that meeting, I was asked by Ms. Eberts a number of questions, including questions about my assets. I gave her orally a list of my assets and she noted them down. She then provided me with a copy of the disclosure form she prepared and which I received on June 24, 1986. I have attached a copy of this disclosure form with my statement.

My shareholdings in Golden Tiger and those of my wife and children are disclosed on that form. As I explained in the House, I became aware in December that 10,000 shares which I thought were in my children's names were, in fact, in the name of my wife Yolande. The correct figures should have been: Yolande 13,000 and Fontaine children 16,500. In fact, I had overstated the combined holdings of my wife and children.

I understood at the time that a copy of the disclosure form would be sent to the Premier's office and would constitute compliance with the guidelines as far as disclosure is concerned.

Throughout late summer and early fall, Mr. Gagné was trying to decide which of my assets should be sold and which should be put in blind trust. I now realize--and I think Mr. Gagné himself would agree--that he may have been out of his depth in trying to advise me on how to comply with the guidelines. I, on the other hand, having left it all up to him, was travelling and working night and day, trying to do all the work that had to be done in my ministry.

By letter dated September 23, 1985, I was advised by Mr. Blenus Wright that I had until December 31, 1985, to advise him as to which assets I had

decided to sell and which to put in a blind trust. A copy of this letter is attached to my statement.

Towards the end of November, Mr. Gagné received a telephone call from Ms. Eberts advising that I should sell my shares in Golden Tiger. Until then, I had not dealt with any of my assets, as Mr. Gagné had suggested that I "stay away from them" until a decision had been made on which of them should be sold and which should be put in the blind trust.

It was solely as a result of this advice, which I accepted, that I gave the instructions to sell the shares belonging to me and to my wife and which I detailed in the House. As I indicated in the House, I gave these instructions in early December, well before the December 31 deadline. It is also at that time that I gave the instructions to have the 10,000 shares in my wife's name held in my bank in Hearst transferred to the names of my children.

Following my resignation as Minister of Northern Development and Mines and member for Cochrane North, all of my children decided to sell their own shares. This was done on July 3, 1986, because of the persisting allegations of impropriety that have been made against me. The shares were disposed of at an average price of 30 cents per share. At present, my family and I do not own any Golden Tiger shares that can be sold or transferred.

With respect to the Golden Tiger escrow shares, it was not until March of this year that I remembered them when I found a three-year-old Guaranty Trust letter confirming their existence. A copy of this letter is attached.

At the time Golden Tiger went public, in December 1982, I was allotted 19,080 shares that were, in accordance with the securities laws of Quebec, to be held in escrow. These escrow shares were immediately deposited with the Guaranty Trust Co. in Montreal.

Shortly after the public financing was completed in early 1983, 10 per cent of the escrow shares were released. Mr. Martin, as president of Golden Tiger, had requested this release and the Quebec Securities Commission approved it. I was then left with 17,172 escrow shares.

There were no other releases, not only because Golden Tiger could not have met the criteria set by the Quebec Securities Commission, but also for other reasons which I will now explain.

In addition to the transfer restrictions imposed by the securities laws of Quebec, an oral shareholders' agreement existed among the original investors in Golden Tiger to the effect that (a) Paul Martin, as Golden Tiger's president, would decide when, if ever, a request to have the remaining escrow shares should be made to the Quebec Securities Commission; and (b) the original investors would always vote their own shares with Paul Martin, if those votes were required to give him a majority; otherwise, they would not vote at all.

The effect of the shareholders' agreement was to give permanent control of Golden Tiger to Paul Martin. By making it impossible to have the escrow shares released, he insured that the largest single block of shares would not go on to the market and jeopardize his controlling position.

Therefore, as a result of both Quebec law and the shareholders' agreement, there was nothing I could do with the escrow shares; I could not sell them or transfer them to anyone; and I could not vote them as I wanted.



In fact, the escrow shares were worthless to me. I could not do anything with them. They brought me no benefit whatsoever. It is not difficult to forget worthless assets. Furthermore, I never received from Guaranty Trust any reminder that I had owned those shares.

As soon as the escrow shares came to my attention, I spoke to Michael Bourgeault, the Kapuskasing lawyer who had set up my blind trust, and asked him what ought to be done with them in order to comply with the guidelines. Mr. Bourgeault in turn phoned Mr. Martin on March 21, 1986, to find out more about the escrow shares and was told by Paul Martin that he should get in touch with Guaranty Trust in Montreal to get more information. Mr. Bourgeault wrote to Guaranty Trust on the same day. Guaranty Trust replied by letter, which was received by Mr. Bourgeault's office on April 14, 1986. Copies of both those letters are attached.

After receiving this reply, Mr. Bourgeault was of the opinion that nothing could be done since the shares were held in escrow. I could not even transfer them to the trustee of my blind trust.

10:30 a.m.

Mr. Bourgeault advised me that the best course to follow would be for him to discuss the matter with Blenus Wright the next time he came to Toronto, which he did on May 23, 1986. Mr. Wright was then told about the escrow shares. He appeared not to be very concerned since the shares were not only in escrow, but they were also the shares of a Quebec company.

Mr. Bourgeault then advised me that an amendment should be made to my blind trust assigning the escrow shares to it so that if ever the shares were released from escrow, they would go directly to it.

The escrow shares represented a very small portion of the more than six million issued Golden Tiger shares, namely, approximately one quarter of one per cent. Nevertheless, following my resignation, I decided that every effort should be made so I would no longer be the legal owner of the escrow shares, even though this ownership was really of no value to me. I therefore consulted the law firm of Clarkson and Tetrault in Montreal, which has been assisting me to get special permission from the Quebec Securities Commission to dispose of the shares.

I am advised that the securities commission will not allow the shares to be released from escrow, notwithstanding the fact that they represent a very small portion of the total shares issued in Golden Tiger. It is prepared, however, because of the exceptional circumstances of this case, to consider a transfer within escrow to a charitable corporation which I founded in Hearst, la Maison Renaissance de réhabilitation, which institution is devoted to helping French-Canadian alcoholics.

In summary then:

1. The Golden Tiger shares which I and my family owned, except for the escrow ones which I did not remember at the time, were disclosed as early as July 1985.
2. As soon as I was advised to sell my Golden Tiger shares, I did so.
3. As soon as I was reminded of the escrow shares, I took steps to deal with them.

4. All of my adult children, even though not required to do so, have now sold their shares.

As a result, all the shares that I could sell were sold before December 31, 1985. The only shares I was left with were the escrow shares which I could not vote or sell. The shares were held by a trust company and were completely beyond my control. That is why I believe that, if there was a breach of the guidelines, it was unintentional and technical.

Before leaving the subject of Golden Tiger, I wish to discuss briefly my relationship with Paul Martin, Golden Tiger's president. I met Mr. Martin in Ottawa in 1948 when we were both attending high school. I lost track of him after we completed our studies and, except for running into him once in 1967, I did not see him until 1979 when he paid me a visit while going through Hearst. He was then out of a job and trying to put together a syndicate that would do some prospecting and stake some mining claims, mainly in Quebec, but also in the Klotz Lake area. Ultimately, I gave Mr. Martin \$9,000 for his syndicate and recruited a number of other investors from our area.

Mr. Martin has been reported in the press as having said that he and I frequently discussed business matters, specifically Golden Tiger, while I was Minister of Northern Development and Mines. I categorically deny that allegation.

During the one year I was a minister, I had only five or six telephone conversations with Mr. Martin. At no time during any of these conversations did he ever remind me of the escrow shares which I had received in 1983. On at least two of these occasions, Mr. Martin phoned me to ask whether I would lend him my condominium in Florida. On the other occasions, Mr. Martin was phoning me to get my moral support during a time when his marriage was falling apart and his bouts of alcoholism were getting worse and more frequent. Mr. Martin knew that I was a long-reformed alcoholic who had given many speeches at Alcoholics Anonymous meetings throughout Ontario, Quebec and the Maritimes, and also that I had founded la Maison Renaissance de rehabilitation in Hearst for alcoholics. In view of this personal history, Mr. Martin hoped I could help him. I talked with him at great length and tried to relieve his depression.

Apart from telephone conversations, I met Mr. Martin personally on only three occasions. Only on the first of these occasions was any business subject discussed, namely, on October 24, 1985, after a speech I gave at the Royal York Hotel in Toronto to the Canadian Institute of Mining and Metallurgy.

The other two occasions were at the prospectors' convention held in March of this year in Toronto, and in May 1986 in Val d'Or, Quebec, where I was giving a speech. On those two occasions, the discussion was either about politics or Mr. Martin was trying, like many other mining promoters, to convince me to introduce flow-through shares in Ontario as a tax incentive for mining exploration. In respect of his own business activities, Mr. Martin only told me how things were going generally, which was usually badly.

The meeting of October 24, 1985, however, had a more specific business purpose. Mr. Martin wanted Raymond Alary, also an investor in Golden Tiger, to take over a company called Kabu Exploration Corp. Kabu had been incorporated in 1983 by Patrick Sullivan, a Toronto chartered accountant and business associate of Mr. Martin, who was also present at the meeting.



Kabu had been created to take over the claims of the Hearst Long Lac grubstake syndicate, in which 58 people, including Paul Martin and myself, had invested \$500. The intention was that Kabu would eventually follow in Golden Tiger's footsteps and go public. In 1983, I was made Kabu's president, and the three incorporating shares held by Mr. Sullivan were transferred to me following the incorporation.

As a result of my election and my cabinet post, I had to resign as an officer in Kabu and transfer my shares. Raymond Alary was to replace me as president and become the owner of my three shares. Mr. Martin told us that he would have all the necessary paperwork done. However, I learned only two weeks ago that the proper corporate resolutions were never passed and that I am, therefore, still the owner of three shares of Kabu. Kabu's only asset is \$300 belonging in equal shares to the 58 initial investors.

I do not know why Mr. Martin did not follow through on his undertaking to formalize my resignation and transfer the shares to Mr. Alary. Mr. Sullivan has assured me that he is now taking the necessary steps to formalize my resignation and transfer the three shares to Mr. Alary.

Finally, on the subject of Paul Martin, I want to advise this committee that in 1983 I gave another of his companies, Wheeler Martin International Inc., approximately \$200. Again, this company was staking claims in northern Ontario. Apart from that, I knew nothing about this company and had no involvement in it at all. In 1984, I received from Wheeler a cheque for approximately \$200, which I assumed was the return to me of my original investment. I thought the company had folded.

However, my lawyers were advised last week by Paul Martin and Patrick Sullivan that the \$200 constituted, in fact, the payment of a dividend resulting from the sale of claims. My lawyers were also advised that in 1984 Wheeler Martin issued 20,000 shares to my name and to Paul Martin, as well as to others. I had never until last week heard of those shares. In fact, Mr. Sullivan has also advised my lawyers that the share certificates, though issued, were never delivered to me or any other shareholders. These shares have no value and no market. However, Mr. Sullivan bought them back at one cent a share, which is equivalent to the return of my initial \$200 investment.

10:40 a.m.:

What I have said demonstrates clearly that Mr. Martin, contrary to the impression that might have been created, is not the head of a mining empire, except perhaps in his own mind.

I am aware that the committee will consider inviting Mr. Martin to testify before it. I urge the committee to do so if there are any doubts as to the accuracy of my portrayal of Mr. Martin and his business ventures. Mr. Martin is an old friend. I do not mean to belittle him in any way, but the facts must be squarely faced. I would rather this committee met with Mr. Martin face to face than be left with false and misleading impressions.

Having dealt with Golden Tiger, I want to take this opportunity to correct some inaccuracies in the disclosure statement I filed on January 31, 1986. I did not bring these matters to the attention of the House on June 26 because I did not know about them then. As will become clear in a moment, some of the corrections are required because of clerical errors made at the time of filing and where omissions are involved, they are not significant.



On June 29, 1986, three days after my statement to the House, my daughter Ninon gave me an information circular of a company called Danvers Resource Explorations Ltd., which had just been received at my personal residence in Hearst. I then remembered that I had bought some shares of that company, along with some of another called Kenartha Oil and Gas Co. Ltd. in 1977. I had my lawyers telephone the brokers from whom I had bought them, E. A. Manning. They were told that between 1977 and 1978 I had bought 6,000 shares of Danvers for a total sum of \$8,600. In 1977, I also bought 500 shares of Kenartha Oil and Gas for a total of \$860. My total investment in the shares of those companies was therefore \$9,460.

To my knowledge, and so far as my lawyers have been able to ascertain, the shares of both companies have not traded since at least the time I became Minister of Northern Development and Mines. I never received any dividends from those shares. They were worthless. Nevertheless, I instructed E. A. Manning to sell them and they were sold at one cent each for a total of \$65. I have lost \$9,345 on these shares.

When my wife Yolande went through her personal papers after my resignation, she found that she had inherited 11 shares of Bell Canada Enterprises in 1984. My wife also remembered she had contributed \$10 to a community radio station in Hearst called Radio de L'Epipette Noire. It may be that she got a share as a result of her donation. I made a similar donation of \$100 just two months ago and I am now concerned that shares may also have been issued in my name. We have been unable to get further details since the person responsible for the station is "in the bush" and cannot be reached at present. We are continuing our efforts to ascertain the facts.

My wife also owns one share with a book value of \$50 in the Coopérative Agricole de Hearst, which operates a general store in Hearst. I have one share worth \$100 in Co-op Mattice, which operates a grocery and hardware store. I mention these co-operative shares even though the guidelines do not require such shares to be disclosed, so that everything my wife and I have is before this committee and the Ontario public.

Shortly after I filed my disclosure statement on January 31, 1986, my executive assistant, Gilbert Héroux, remembered that each of us had contributed, along with 46 other people in Hearst, \$200 to establish Les Industries Nordex Inc. Nordex was established to carry out research into the possibility of developing peat resources in the area. However, the project never got off the ground. All that has been done to keep the corporation alive from year to year is to pay the necessary fee to the government. Minutes were not kept. The few directors who have any interest wish to wind up the company and pay out the shareholders the \$5,000 that remains in the bank account, that is, approximately \$100 for each shareholder.

I have attached to my statement a letter I wrote on February 10, 1986, to the treasurer of Nordex, informing him of my resignation as president of this inactive company and asking for the return of my initial contribution of \$200. A copy of this letter was sent to Blenus Wright, Assistant Deputy Attorney General. I never received any response or any money back.

My disclosure statement identifies my interest in Le Panache. Le Panache is a men's clothing store in Hearst set up a few years ago by 11 of us who invested \$5,001 to help an unemployed mutual friend set himself up in business. We each received one common share. Upon reviewing the corporate records recently, Michael Bourgeault has advised that I, like the 10 other investors, also own 100 preferred shares of this store at a par value of \$50



each. The store has never been profitable and no dividends have been paid.

My final disclosure did not list a piece of land located in the district of Cochrane; namely, the eastern half of lot 13, concession 4, parcel 1962, in the township of Hanlan. This property was contained in the disclosure statement prepared by Mary Eberts in July 1985 but it was inadvertently left out in my January 31, 1986, filing. Since the land is vacant and is not used for any business purposes, I am told that, strictly speaking, it may not have to be disclosed.

Finally, I should deal with the allegation made in the House recently and repeated yesterday by Mr. Brandt to the effect that I failed to disclose one share in a community newspaper called Le Nord. This allegation is untrue.

In the early 1980s, Fontaine Lumber contributed \$201 to help establish a community newspaper for the Hearst area. In return, Fontaine Lumber received one common share and 20 blocks of \$10 each of debt owed by the corporation that operates Le Nord and whose actual name is Les Presses du Nord-Est de l'Ontario Inc.

To my knowledge, Le Nord has never made any profit or paid any dividends. As of October 1983, the debt owing to Fontaine Lumber has grown to \$355.97. The books of Le Nord, I am advised, have never been updated since that time; therefore, I do not know exactly how much is owed by Le Nord today.

When I was interviewed by Mary Eberts in the summer of 1985, I disclosed my one share in Le Nord, as you will see in my July 1985 disclosure statement. However, when the matter was further investigated prior to my January 31, 1986, filing, my lawyer in Kapuskasing, Mr. Bourgeault, found that the Fontaine Lumber share in Le Nord was in fact owned by United Sawmill as a result of the 1982 amalgamation of Fontaine Lumber into United Sawmill. My shareholdings in United Sawmill were disclosed and put in a blind trust. Since the \$1 share in Le Nord became an asset of United Sawmill, there was no need to disclose it specifically.

Now that the facts are before the committee, I trust members will agree that nothing significant was omitted from my disclosure statement. The changes I have put before you all involve small interests. Often they were more in the nature of donations than investments. The resource-related ones amounted to a total of \$275, as indicated in the calculation attached.

Still, even though the corrections I have made today are minor, I know I must assume the responsibility for not supervising the matter more closely, and for my advisers not digging up every possible share or debt interest I had, however small.

10:50 a.m.

If I was wrong because I did not a year ago hire the team of lawyers that was necessary to unearth all the facts I put before the House on June 26 and this committee today, and because some of the advisers and lawyers I depended on may not have completely understood the nature of their tasks, so be it. However, those who say I was wrong make the mistake of thinking that a man is honest only if everything he does is written down. Where I come from, people do not stand for formalities. In business and in politics, we rely on mutual trust and accept each other's word.

I was mayor of Hearst for 13 years and, without wishing to boast, I

think I did a few good things for my community. I did those in the same way that I tried to discharge my duties as Minister of Northern Development and Mines; that is, informally, but still effectively and honestly.

I suppose the trouble with that style is that you do not back up everything with paper; you have to know the man. That is why I am confident that the people who know me will take me at my word, even if it is not written down.

Mr. Chairman, that is my statement.

Mr. Chairman: I want to clear up one point before we begin the questioning. On a previous occasion the committee asked to try to get what was identified to us as a questionnaire that members of cabinet filled out. It would appear to me that what you have supplied us with, entitled, "Part I, Compliance with the Legislative Assembly Act," may be that questionnaire. Can you clarify whether it is or not?

Mr. Pratte: I am not sure. That request was never passed on to me. I am not sure who you made the request of.

Mr. Chairman: Okay. Just for your information and that of other committee members, we have followed it this far. We contacted people in the Premier's office. They made us aware that the questionnaire was the personal property of Mr. Fontaine. It was not a cabinet document.

Later today we were going to ask Mr. Fontaine if he was prepared to supply that questionnaire to us, as has been supplied to the public accounts committee. On the same basis, there would be an opportunity for him to do some vetting of personal and private information. I am asking the question: Is this the document we are searching for? I think it is.

Mr. Pratte: First, I did not know the committee was searching for it; I think that is the document. If the answer is different, I will advise you.

Mr. Chairman: Perhaps after the proceedings are concluded this morning we could pursue that to see whether we can get that for the committee. I take it we are now ready for questions from the committee.

Mr. Pratte: With your leave, I want to express a concern. In Mr. Fontaine's statement obviously he has tried to answer, as well as he could, all the points raised so far in respect to his personal financial affairs and the disclosure of them.

In fairness, Mr. Brandt's statement yesterday said on two occasions, as I recall, he was not putting forth all the allegations necessary that may come up. I understand he may not have them all so far. I do not know what his thinking is but given the seriousness of the charges against Mr. Fontaine, I think, in fairness, if any of the allegations are known today, we should be made aware of them and have some time to deal with them. If they arise later in the proceedings, again we should be made aware of them and have some time to ascertain the facts so that we can do a good job in putting all the facts, as well as we can, before the committee.

Mr. Chairman: I think you have that assurance from the committee.

Mr. Pratte: Thank you, Mr. Chairman. I appreciate that.



Mr. Chairman: Questions. No questions?

M. Villeneuve: Merci, monsieur le Président. Monsieur Fontaine, on vous remercie d'avoir comparu devant nous ce matin. On réalise que vous êtes peut-être un peu moins occupé maintenant que vous ne l'étiez quand vous étiez ministre. Mais par contre, on vous remercie tout de même d'être venu ici du Grand Nord. Etes-vous satisfait que le comité qui vous écoute ce matin est réellement neutre et après la démission de M. Brandt hier - je suis certain que vous êtes au courant - êtes-vous satisfait de la neutralité du comité tel que vous le voyez ce matin?

M. Fontaine: Bien, certainement quand vous dites satisfait... pour moi, je trouve ça bien difficile, personnellement, d'être jugé par des personnes qui sont dans l'opposition. Je parle pour moi.

M. Villeneuve: Vous seriez plus satisfait si le comité était entièrement libéral?

M. Fontaine: Non, non. Ce n'est pas ce que j'ai dit. J'ai dit que c'est difficile pour moi d'être jugé, de me sentir jugé, la majorité étant dans l'opposition. C'est très difficile pour moi d'être à l'aise avec ça, mais en principe, j'accepte la décision que vous avez prise, puis j'ai accepté de venir ici de mon gré. Je suis satisfait.

M. Villeneuve: Sans réticence.

M. Fontaine: Bien, je te le dis encore, ça ne m'ôte pas en moi-même une certaine réticence d'être jugé par des personnes qui sont dans l'opposition. N'importe qui, peut-être, aurait cette réticence-là.

M. Villeneuve: Je vous comprends. Maintenant, retournons un peu à avant votre élection du 2 mai 1985. Dans la région où vous demeurez, vous étiez le maire de Hearst. D'après les gens de la région, étiez-vous un homme d'affaires, un commerçant de bois? Qui est René Fontaine à Hearst?

M. Fontaine: Tu aurais dû être là mardi passé et tu aurais vu ce que le monde pense de René Fontaine dans Hearst et dans le comté de Cochrane Nord.

M. Villeneuve: Avant, avant...

M. Fontaine: Premièrement, comme homme d'affaires, Fontaine Lumber, ma famille, on est là depuis 1922. Et puis René Fontaine, dans la ville de Hearst, est l'homme qui s'est dévoué pour n'importe qui. Je vais te dire quelque chose, la porte de ma maison n'est jamais barrée.

Encore il y a deux semaines, on s'est fait voler \$155 par un jeune qui nous a volé un chèque, un livret de chèques, et qui a signé un chèque. Je lui ai pardonné. Ma femme et moi, on lui a pardonné. Il est arrivé dans ma maison, c'est un gars qui travaillait pour moi, qui coupait mon herbe puis qui s'occupait de ma maison depuis deux ans et il m'a volé. J'ai vu du monde entrer dans ma chambre à coucher, ma femme est là, elle peut le dire. Du monde qui avait des problèmes de boisson et qui entrait directement dans ma chambre à coucher, durant la nuit. Moi, René Fontaine, dans Hearst, je n'ai jamais signé de contrat. J'ai toujours signé par une poignée de main.

J'ai employé jusqu'à 300 hommes. Tu peux le demander aux unions et aux personnes qui travaillent pour moi. Tu sais que dans l'industrie du bois de sciage, souvent l'entrepreneur ou le propriétaire sont accusés d'avoir faussé le mesurage du bois. Mais moi, j'étais en affaires depuis 1958 et sans me vanter, il y a à peu près trois fois, par l'entremise de l'union ou autrement, que le bûcheron a demandé à être remesuré. C'est de cette manière-là que tu te fais juger lorsque tu travailles dans le bois à Hearst, dans l'industrie du bois de sciage, par la manière dont tu mesures le bois. Si c'est neuf pouces, tu donnes neuf pouces; tu ne donnes pas six pouces.

Je n'ai jamais été accusé d'avoir volé le monde sur la balance et c'est depuis ce temps-là que le monde a confiance en moi. Et à part ça, je me suis occupé des jeunes, des hommes, du monde dans la misère et je me suis occupé de mon Eglise. Avant que j'entre ici, j'étais pour m'en aller comme diacre dans mon Eglise. Alors, je ne suis pas venu ici pour voler le monde. Je peux te dire ça.

Mr. Chairman: I am going to intervene here because I think it should be noted on the record that the simultaneous interpretation this morning is going to be what is called in the trade "a rough cut".

Mr. Villeneuve: How do you translate that?

M. Fontaine: Non - et puis dans ma communauté, j'ai oeuvré dans les Lions, Les Chevaliers de Colomb, la Chambre de Commerce avant d'entrer en politique. Après, j'ai été maire de la ville pendant 13 ans, puis conseiller pendant quatre ans. J'ai laissé certaines associations et j'y suis revenu après. J'ai été celui qui a créé les Francophones-Ontario. Il n'y avait pas de centre de réhabilitation pour les personnes qui avaient des problèmes avec la drogue et la boisson; j'ai créé cela à Hearst pour représenter les Canadiens-français de l'Ontario. J'ai créé un centre pour les jeunes qui s'appelle l'Arc-en-ciel, pour les jeunes qui ont des problèmes avec la drogue. En plus, j'ai créé, avec les Soeurs de l'Assomption, une autre maison pour les femmes battues ou les femmes qui ont des problèmes avec leurs maris affectés par la boisson ou la drogue.

11 a.m.

M. Villeneuve: Soyez assuré que le comité ne questionne du tout ce que vous avez fait. J'aurais aimé connaître votre impression. Vous êtes un homme à tout faire, d'après ce que vous dites, dans la région de Hearst.

M. Fontaine: Oui.

M. Villeneuve: Mais votre commerce, en tant qu'homme dans le commerce, étiez-vous principalement un homme d'affaires dans le bois, un homme d'affaires dans d'autres choses? Faut gagner sa vie.

M. Fontaine: Bien moi, ma compagnie, je peux dire que dans le fond, souvent je me suis fait accuser par ma femme et par mon gérant, un nommé Palmer, que j'étais seulement là à temps partiel, parce que je ne m'occupais que des autres et que je ne m'occupais même pas de mes affaires. Mais tout de même, durant les années que j'ai oeuvré dans ma compagnie de bois, on a fait d'assez bonnes affaires; mais personnellement, je m'occupais plutôt du côté du moulin à scie, du côté du personnel. Combien de temps? Eh bien... j'étais souvent parti pour les affaires des autres, la Ville de Hearst et autre chose



M. Villeneuve: Les 300 employés que vous mentionnez, qui étaient à un moment donné employés par vous, étaient-ils principalement employés au moulin à scie ou dans le bois?

M. Fontaine: Nous autres, à Hearst, on fait toutes les opérations. Pour le bois de sciage, on fait les opérations dans le bois, puis au moulin à scie, puis l'opération de rabotage et enfin la vente. Alors, on fait tout. On fait tout nous-mêmes.

M. Villeneuve: Etes-vous impliqué dans plus d'une compagnie de bois?

M. Fontaine: Je sais où tu veux en venir. Hier, j'écoutais votre avec bien des noms, mais avais-je bien donné l'historique de ma compagnie?

La compagnie Fontaine avait été créée par mon grand-père dans les années 1920. Il a été incorporé en 1936, sous le nom de Fontaine Lumber Timber Company Ltd. Tu l'as dans la tête, là? Ensuite, en 1958, mon père m'a vendu une partie des limites de bois, les concessions forestières et le moulin à scie. Puis là, j'ai pris le nom de Polar Lumber Company Ltd. Les permis que nous avons ont été changés à Polar Lumber Ltd.

Après, les années ont passé. Mon père est mort en 1965 et quelque temps après, j'ai repris le nom de Fontaine Lumber, mais j'ai enlevé le Timber - Fontaine Lumber Company Ltd. Car tout le monde, à Hearst, te connaît sous le nom de Fontaine, c'est tout. Alors, le permis est resté sous le nom de Polar Lumber Company Ltd. Si tu veux en connaître les raisons, tu n'as qu'à les demander aux gars du gouvernement; ce sont eux qui ont décidé ça. Moi, je voulais le faire changer, mais eux ont dit non. Alors, cela a duré jusqu'en 1981. Mon beau-frère avait acheté une compagnie américaine du nom d'Arrow Timber.

M. Villeneuve: Le nom de votre beau-frère?

M. Fontaine: Arrow Timber.

M. Villeneuve: Le nom de votre beau-frère?

M. Fontaine: Il est mort. C'était Aimé Joanis. Il est mort d'un accident de skidoo. Puis ma soeur a fait gérer cette partie-là par un gérant. Ensuite, on a décidé, en 1965 - moi, j'avais mon moulin dans le bois - je sciais le bois, je livrais le bois à mon père, à Hearst. Mon père faisait le rabotage et la finition du bois; en plus, il vendait le bois. Moi, je lui livrais le bois à un prix, disons \$40.00 du mille pieds, livré à Hearst.

En 1965, mon beau-frère et moi-même, nous avons décidé de bâtir un moulin à scie à Hearst. A ce moment-là, le moulin était à 60 milles de Hearst, dans le bois. J'utilisais alors les camions pour amener le bois à Hearst. Alors, on a décidé, pour des raisons économiques, d'avoir un moulin central car lui, ses concessions de bois étaient plus proches de Hearst que moi. Alors, on a formé une sorte d'association qui s'appelait F & J, Fontaine et Joanis, pour bâtir le moulin.

A ce moment-là, mon père nous a vendu le restant qu'il avait, la finition et la vente de bois. Mon père a pris sa retraite et il est mort un an après. Ensuite, Aimé Joanis est mort à la fin de 1968, dans un accident de skidoo, laissant six enfants et ma soeur veuve. Puis, on a continué à travailler de la même façon, indépendamment, mais le moulin appartenait aux deux entreprises. Les limites... la mienne étant probablement sous le nom de Polar Lumber, je n'ai pas regardé ça, mais la concession

de bois devait appartenir à Hearst Timber . Ca n'a jamais été sous le nom de F & J .Le gouvernement, étant donné que mon bois était tellement loin, a décidé de me rapprocher de Hearst et m'a donné une concession de bois dans le comté de Fouchimi ou canton de Fouchimi. D'ailleurs, on est encore là et on opère dans ce coin-là. Un peu avant, il y avait une compagnie qui s'appelait Deep Forest, qui bûchait du bois sur ce qu'on appelle en anglais un "leasehold". Ca n'appartient pas à la province, ça appartient à une compagnie française de France qui avait reçu cette concession de bois pour ne je sais quelle raison, mais en tout cas, c'était à eux. Ca n'appartenait pas à la province.

Alors, on l'a laissé entrer dans notre moulin à scie comme partenaire: un tiers, un tiers, un tiers. Alors, on a fonctionné comme ça de 1970 à 1980 et dix ans après, on a décidé de tout mettre ça ensemble, Fontaine Lumber et l'association s'appelait United Sawmill qui plus tard, est devenue United Sawmill Limited. Puis Fontaine, Arrow Timber et Deep Forest qui avait peut-être un petit permis de bois sous le nom de Moose Land, parce qu'il avait acheté ça de son frère, 5,000 cordes. Donc, l'association s'est appelée, en 1980, United Sawmill Limited, où j'ai presque 33 pour cent. Ma famille Fontaine a 33 pour cent, Deep Forest, son nom est Charles Lecours, ses enfants, sa famille, ont 22 pour cent et ma soeur et ses enfants ont 42 pour cent. Voilà l'histoire.

M. Villeneuve: Une entreprise familiale qui contrôlerait environ combien d'acres de bois?

M. Fontaine: On ne contrôle pas d'acres de bois. On a des cordes de bois. Ca ne se contrôle pas. Ces permis-là, tu devrais le savoir parce que tu fais partie du gouvernement depuis très longtemps, les permis, tu les as pour un an, des fois pour cinq ans. Ils sont renouvelés. Ces permis-là remontent à mon grand-père, ceux de Fontaine. Ce n'est pas d'aujourd'hui. Il y a des années, on a commencé peut-être avec 5,000 cordes et le gouvernement nous en a redonné. Si je me rappelle bien, en 1952, lors des élections, M. Léger qui était candidat Conservateur perd sa nomination pour se faire battre par M. Phil Kelly dont vous savez l'histoire: M. Frost l'avait limogé à un moment donné. Six mois plus tard, mon père qui avait une concession de bois dans le canton de Riché, perd son canton. Je ne sais pas pourquoi; peut-être qu'il n'avait pas voté du bon bord ou autre chose, mais il l'a perdu pareil. On était là depuis 1934.

C'est à ce moment-là que le gouvernement de l'Ontario qui a vu ces choses pas tout à fait correctes --parce que mon grand-père et mon père étaient là depuis 1934 --puis je veux vous rappeler qu'on a reçu ces limites de M. Hepburn qui est un libéral. Parce que dans ce temps-là, les petits gars comme nous autres, les petits Canadiens-français qui allaient en Ontario, n'avaient pas de limites. Ils nous donnaient ça par 200 cordes, comme ils le faisaient avec les fermiers. A ce moment-là, ils ont cru bon que chaque petite compagnie dont M. Lecours, M. Hammon, les Fontaine, les Dallaire, les Gagnon devraient avoir un petit permis. C'est là qu'a commencé leur permis.

M. Villeneuve: Vous avez fait du progrès depuis ce temps-là.

M. Fontaine: Pas trop de progrès. Ça été des batailles très difficiles parce qu'on avait des grosses compagnies de chaque bord qui voulaient nous étouffer. Les pâtes et papiers, toute leur vie, nous ont tenus avec des petits permis.



En 1952, ils ont établi de nouvelles lois dans cette province: ceux qui avaient un moulin à scie dormant de l'emploi auraient des permis permanents. En 1972, là on avait 12,000 cordes. En 1972, M. Brunelle a additionné à tous ces permis de Hearst 10,000 cordes, ce qui a fait 22,000 cordes. C'est là que j'ai eu 22,000 cordes et que j'ai rentré dans United Sawmill avec 22,000 quelques cents cordes que j'ai amenées dans la United Sawmill.

M. Villeneuve: Vos implications dans Golden Tiger et autres compagnies minières ont débuté approximativement quand?

M. Fontaine: Premièrement, je ne suis pas un expert dans les mines. Je ne connais pas la différence entre deux roches. J'ai été là en 1979, comme je le dis dans mon document, seulement pour aider un ami qui voulait faire du développement, soit au Québec, soit en Ontario. Je l'ai aidé à ramasser de l'argent. J'ai mis \$2,000 dans le syndicat. C'est comme ça que j'ai commencé et aujourd'hui, je suis encore ignorant de toute cette histoire-là.

M. Villeneuve: Merci. Je crois que ça établit un peu ce qui s'est passé avant la date de l'élection le 2 mai dernier. Merci monsieur.

Mr. Chairman: We are going to pause for a moment, as I know people in the simultaneous interpretation booth will appreciate a small respite.

The committee recessed at 11:10 a.m.

11:17 a.m.

Mr. Chairman: The committee will come to order and proceed with the questioning of the witness. Mr. Villeneuve, are you finished?

Mr. Villeneuve: Yes, I am for now.

Mr. Martel: I think I need to hire you as a consultant so that I know how to invest, because these shares just keep coming back to haunt you, and in such large quantities.

There is only one thing that is worrying me, and I do not know how to get at it. I indicated to the committee the other day that the easy part is setting up dates and putting dates here and shares there, and that is pretty straightforward. The difficulty is the subjective part, the forest management agreement that was raised and the extensive length of time.

An article appeared in a newspaper, and I guess this is where the difficulty is and when it becomes subjective as to whether or not a minister who holds a share or shares in a company and pushes to get an agreement finalized. I well understand the history of it. I know it went back three years and was started under a whole series of ministers prior to you. This article in the newspaper indicates you were attempting to push that to finalization, I suppose, so that there would be benefits for Hearst and the area.

Do you perceive that as a conflict? Hindsight is easy in this business, but having had shares in a company that would derive some benefit, I guess for us as a committee this is the difficult or grey area to get our hands on. Do

M. Fontaine: Premièrement, je n'ai pas poussé pour avoir le FMA. S'il y a eu des articles qui ont paru dans les journaux de mon coin, on l'a dit après que j'ai eu démissionné. Le sentiment que j'avais dans le cœur lorsque j'ai dit qu'à un moment donné, en particulier ce qui a été écrit par des journalistes. Tu sais ce que je veux dire, est-ce qu'ils ont tout écrit ou pas assez écrit? Ca, j'ai dit que je ne pouvais pas voir pourquoi une région ou des régions, et je n'ai pas parlé que de Hearst, j'ai parlé de d'autres régions, parce qu'on travaille aussi tous dans le bout de Cochrane, Normick, Perron, pour avoir un FMA. Je travaille avec la compagnie Buchanan pour avoir un FMA dans le bout d'Ear Falls, puis Hudson.

Je ne comprends vraiment pas pourquoi, dans mon comté, parce qu'il y a un député, un ministre, que les compagnies ne pourraient pas bénéficier d'un programme du gouvernement. Ca me faisait bien mal ça, parce que ces discussions sur le FMA avaient été commencées par M. Pope.

Si tu te rappelles, Elie, en 1980, les FMA avaient été formés seulement pour les grosses compagnies de pâtes et papiers, tandis que les petites compagnies de moulins à scie étaient restées en dehors. On ne nous avait même pas consultés lorsqu'on a décidé de faire des FMA pour les pâtes et papiers. L'Association des moulins à scie n'a jamais été consultée. C'est en juin 1980 que des personnes avaient approché le Nouveau Parti démocrate et d'autres le Parti libéral, en leur disant que les indépendants, les moulins de contreplaqué, "plywood mills", small jobbers, these others were never consulted on the FMA. That was not right. We were getting pushed out of the North because the FMA put a fence around it and we could not move in it.

Then we had a meeting here with Mr. Auld, all the sawmill people, and at that time I was a director. The spokesman was Mr. Dubreuil. Mr. Auld knew exactly that we were trying to use the NDP because there was a minority government; that was before the election in 1981. We were trying to use the opposition as a minority, like today, to filibuster the last days of the House---that was June 15--to make Ontario and the government aware that the FMA was not only for the big guys, but the small guys should be consulted.

We were promised by Mr. Auld at that time that they would form a committee of three men, one each from the Ministry of Natural Resources, pulp and paper and sawmills, to discuss the effect of the FMA on the small operators, sawmills, etc. They promised that because they did not want a filibuster.

At that time we were also promised that there would be no more signing of FMAs, except the one that was signed. There was one, Abitibi, that had been signed. E. B. Eddy and Great Lakes Forest Products were ready to sign, and the ministry said it would not do it. We were also promised that Spruce Falls would not sign before 1981. On July 9, we received a letter that there would be no committee. Parliament was closed and the minister was sorry about those two FMAs that were supposed to be a little later. We heard nothing about it. We heard in the fall of 1980, just before the election, that Spruce Falls had got an FMA, which we had been earlier told it would not get before 1981; so all the sawmill people were pretty mad.



When Mr. Pope was named Minister of Natural Resources, I think in 1982 or 1981, he was named right away, I think, after he was elected. I became president of the Ontario Lumber Manufacturers Association and some of his friends such as Mr. Mallette and other people--the manager of Mallette Lumber, as you know, is very close to Mr. Pope too--pushed together to Mr. Pope that independent sawmills should have their own forest management agreement.

As you listened to Mr. Mancini yesterday, in one of Mr. Pope's big speeches--and he gave more than one speech on this--he said that the independent sawmill shall have their FMA. The first one was Mallette and Dubreuil, and Hearst should have a co-operative FMA, and Chapleau should have a co-operative FMA.

Later on he had in mind what we are working on today. Then some day in September I arranged a meeting with Mr. Pope in his office, not in Hearst, but in Timmins.

C'était dans le milieu du mois de septembre - on est descendu là en avion avec M. Lévesque et M. Lecours - Larry Lecours, Réal Levesque et moi-même, dans le bureau de M. Pope, et là on lui a dit que les personnes de Hearst voulaient aller dans un FMA. Et de là, tout est arrivé. Les réunions qui ont duré toute l'année 1985 parce qu'ils devaient l'assigner en juin 1985. J'ai été élu député au mois de mai et je ne suis pas retourné à ces réunions; je n'ai participé à rien d'autre. La seule chose, jusqu'au mois de mai, j'ai participé à des négociations qui avaient lieu.

Je peux te dire, M. Martel, parce qu'à ce moment-là, presque tout était négocié, tant qu'à moi, et il restait à négocier certaines choses comme: est-ce que les arbres qui poussaient sur les territoires que Hearst recevait ... because reforestation was not going right because you do not want to get punished after. In the FMA, you get punished if that thing does not grow. I left and I never went back there. I went to a meeting and that was it.

When I was in Hearst I was told there was nothing new about the FMA. People there felt it was the end. I felt bad. That is what I said. I knew there was an accusation made generally. Mr. Grossman wrote a letter to the Conservative members, the people in Ontario, mentioning the FMA. Then I saw Mr. Brandt's Conservative statement in the plane. I did not see it up to that time when I was going home. Somebody gave me that press release and there was Runciman mentioning that. I had some friends of the Conservative Party phone me, telling me they were after me on mining and the FMA and I will be the next. Somebody phoned me after. I had some friends too on the other side, in both parties, who told me the same thing: "Fontaine, they are after you."

I had some MPPs from the Conservative, New Democratic, Liberal and some federal parties who told me and I did not believe that, because I thought that when there is a policy, there is a policy for everybody.

Mr. Pratte: It is not my job to interrupt but I have some concern on the FMA about the scope of the questions. As I understood your question, is there not some problem with the guidelines, in that complying with them in terms of putting your interest in a blind trust, as Mr. Fontaine did, resigning may not deal with all the problems.

We are here to help the committee as much as we can in talking to them about Mr. Fontaine's compliance with the guidelines. If you want, I suppose we can tell you what might be deficiencies of the guidelines. We do not want to be here for ever but we can give you our opinion.

I want to be clear on the record that in respect to the FMAs, Mr. Fontaine complied with the guidelines. If that is not good enough, that is the guidelines' fault and not his. I wanted to get the scope of your question clear.

Mr. Chairman: Let me intervene here. I want to reiterate that the witness has counsel present. The purpose of counsel being here is to advise the witness, not the committee. We would appreciate you holding your interventions to an absolute minimum. I do not feel that anything you have said so far offends members of the committee very much but I would caution you that you are here to advise Mr. Fontaine and not the committee.

11:30 a.m.

Mr. Pratte: Perhaps I should get a clarification on this. It is difficult if questions seem to be outside the scope of the mandate to the extent that we know what the mandate is. That is all I am trying to understand.

Mr. Chairman: Let me be a little more explicit. You are quite free to talk to Mr. Fontaine. If the members of the committee choose to ask you questions, you will be free to respond to them. However, we have not called you as a witness and you are not here in the process you are familiar with where you would represent a client in court and you would have the right to cross-examine.

I am trying to put a gentle caution forward. We are happy to have you present with the witness to advise the witness, but you have not been invited to appear before the committee to advise on committee matters. The members will decide the jurisdiction of the committee and the frame of reference. That is the committee's job.

Mr. Martel: Let me go back and clarify what I am trying to say to Mr. Fontaine so there is no mistake. If his lawyer wants to take a lot of time discussing it with Mr. Fontaine, take as much time as you need. I am not trying to lead him, if you think that is what I am trying to do.

Mr. Pratte: No.

Mr. Martel: You can spend as much time as you want advising René on what you understand my question to be.

For me, two issues are at stake. One is whether one adheres to guidelines and clearly indicates and reports his holdings. Dates are very important for that sort of thing.

The other one is the whole purpose of conflict-of-interest guidelines. If you get into an area where you as the minister might have shares in something and you use your influence to get whatever it is, then as the minister you should not get involved in it because you hold shares. Mr. Brandt used the analogy yesterday of pharmaceutical shares and the Minister of Health. In Mr. Fontaine's case, he was the minister responsible for mining and the north.

Because of the article in the newspaper, it would appear this was discussed in cabinet: "The decision to sell the FMA approval was made the day before Fontaine resigned. Fontaine was not at the cabinet meeting." That is the dilemma for all of us as we delve into this; whether there is a conflict when one pushes to get something through cabinet from which he might or might not have some benefit.



I was asking the minister whether he perceived that to be a problem. Based on what appeared in the newspaper, it appears it went to cabinet. I have no way of knowing, so I have to ask the minister whether it did go to cabinet, whether it was discussed in cabinet. As I was told by the chairman yesterday, my chances of getting an answer to that are pretty remote, but none the less I will try.

Mr. Fontaine: I was not at cabinet. I did not go to cabinet. After the allegation on Tuesday, I never went to cabinet.

Mr. Martel: Any suggestion that this was pursued in cabinet by you is erroneous?

Mr. Fontaine: Yes. That is correct. I was not there.

Mr. O'Connor: One small point initially, if I may. In your initial comments on page 2, you indicated the form to which you were referring and which is attached was dated June 24, 1986. The text says July 24. Can you clarify that for us?

Mr. Pratte: If I may respond to that, Mr. Chairman, it is a typographical error. It is 1985. The date is correct in the statement. It is July 24, 1985.

Mr. O'Connor: It is July and not June? He did say June in his oral presentation.

Mr. Pratte: It is July. I see it says 1986; of course, it is 1985.

Mr. O'Connor: I want to ask some questions, if I may, about the Golden Tiger situation. You have set out for us, both in your statement in the House and today at quite some length, the history as you recall it of your shareholdings in that company. Can you recall for how much you originally purchased or were issued the shares in Golden Tiger?

Mr. Fontaine: Could you ask that same question again?

Mr. O'Connor: When the shares in Golden Tiger were originally issued to you in December 1982, do you remember what the issue price was?

Mr. Fontaine: The syndicate, the people who were part of the syndicate, the money that we put in the syndicate gave us some shares at about 36 cents. There were some shares transferred at the time the company became public. That was the syndicate share and part of it stayed in escrow. This was where the 18,888 was arrived at. These were at 36 cents. After that, when the shares were sold before Christmas 1982, they were at 44 cents. When the shares became public, at that date we had to sell them.

Mr. O'Connor: I think it was February 7, 1983.

Mr. Fontaine: Everybody in the syndicate got the amount of money he put in. Probably there were people who put in more money than I. I put \$9,000 in the syndicate. This gave us about 36,000 shares. There was one amount, 10 per cent over here.

Mr. O'Connor: Maybe I can help.

Mr. Fontaine: No. We call that free shares. You must do your lawyer

work on that. When you put money in a syndicate, some will go in escrow and they give you free shares. These were at 36 cents, the 18,888. That was the value, 36 cents.

When they issued the shares to sell to the public, they came out at 44 cents and I bought 10,000 at 44 cents. After that, they went up. I bought some at \$1.10, \$1.10, \$1.25, \$1.05, 95 cents, 85 cents and a few at 65 cents, but most of them were over 90 cents. All that I bought with that money, the big majority of the shares that I bought, was in 1983. Before it was 5,000 shares, but all the rest was bought in that year. To date, I put the interest on it. I am sure it is over \$1.20 if I put the interest on. I did not sell too many shares in those two years. I sold 5,000 and I bought 5,000 right away. Practically 95 per cent of those shares we never sold. I bought them and they stayed there.

At the same time, I bought a warrant from Noranda and I sold Revelstoke right away, but all the rest, all the shares that I bought in Montreal were Golden Tiger. The average share, if you count my interest, is over \$1.20 a share.

Mr. O'Connor: What you are saying is that after the original escrow shares of 19,000 odd, other than those, you accumulated on the open market a quantity of shares that amounted to in excess of 45,000. Is that correct?

Mr. Fontaine: Yes.

Mr. O'Connor: At varying prices?

Mr. Fontaine: Yes.

Mr. O'Connor: Those are the ones you held until December 1985?

Mr. Fontaine: But part of my 45,000 was this 18,888.

Mr. O'Connor: I will get to that. You held those until December 1985--

Mr. Fontaine: Yes.

Mr. O'Connor: --when you sold them, as you have indicated in your statement?

Mr. Fontaine: I sold them, yes.

11:40 a.m.

Mr. O'Connor: On February 7, 1983, you were able to retrieve from escrow 1,908 of the escrowed shares. Is that correct?

Mr. Fontaine: Yes. That was added to the--

Mr. O'Connor: It was added to the 45,000.

Mr. Fontaine: No, it was part of that. It was added to what I had.

Mr. O'Connor: You did not sell them.

Mr. Fontaine: No.



Mr. O'Connor: You referred to an escrow agreement with Guaranty Trust. Do you have a copy of that agreement? If not, can you get it and produce it for us?

Mr. Pratte: I can take that question. I do not have a copy of the agreement. I may have had it at one time. If I can get it, of course I will produce it.

Mr. O'Connor: It is quite important that we have it because Mr. Fontaine has made specific statements that the escrow agreement totally prevents him from access to the shares. Quite frankly, in my reading of the Quebec Securities Commission regulations, that is simply not the case. The holders of escrowed shares have the right to acquire 10 per cent of those shares, as did Mr. Fontaine in the first year after he put them in escrow; 10 per cent per year thereafter, until they commence operations, in Ontario in this case, after which he could acquire all those shares.

The regulations are quite specific in that regard. Unless there is something in the escrow agreement that prevents him from doing it, and I doubt it highly, having some general background knowledge of these agreements, I am wondering, first, why he made the statement that he has no access to them when it appears that under the regulations he probably does, and second, whether he made further application for them, or if he did not, why not, as he did the first year?

Mr. Pratte: Since you are addressing the question and asking--

Mr. O'Connor: I am asking Mr. Fontaine.

Mr. Pratte: You are asking me to undertake to produce the agreement.

Mr. O'Connor: I asked that undertaking of the witness.

Mr. Pratte: Yes. I will give it.

Mr. O'Connor: Mr. Fontaine, can you give us an undertaking to produce the escrow agreement?

Mr. Fontaine: Yes.

Mr. O'Connor: Is it your understanding or not that you did have the right to draw down further of the escrow shares annually according to Quebec Securities Commission regulations?

Mr. Fontaine: I have no right.

Mr. O'Connor: That is your understanding.

Mr. Fontaine: You have to recall also that I said there was a verbal shareholder agreement.

Mr. O'Connor: We will get to that in a moment. You indicate that you did draw down 10 per cent the first year; 1,908 shares.

Mr. Fontaine: Yes. It was released by the president with the approval of the securities commission.

Mr. O'Connor: I know the approval of the securities commission is

required, but what procedure was followed when you took the 10 per cent? Did you apply for them? Did you ask for them?

Mr. Fontaine: No.

Mr. O'Connor: How did they come to you?

Mr. Fontaine: What?

Mr. O'Connor: How did it happen?

Mr. Fontaine: I do not know specifically.

Mr. O'Connor: Do you realize that under the terms of the escrow agreement you have the right to vote those shares?

Mr. Fontaine: Je crois que dans l'entente que j'ai eue avec les autres partenaires, les autres actionnaires ...on a eu une entente verbale --on ne nie pas qu'on peut voter les actions. On a une entente entre nous qui dit qu'un vote, celui du président. C'est ce que j'ai dit dans ma présentation.

Mr. O'Connor: As you have indicated, there is a large number of shareholders. Is that correct? There are some six million outstanding shares of Golden Tiger.

Mr. Fontaine: To date.

Mr. O'Connor: Approximately how many shareholders are there?

Mr. Fontaine: I do not know.

Mr. O'Connor: Several hundred; is that correct? You are telling us that you have a verbal agreement among several hundred people to the effect that you are going to vote your shares as the president wants you to.

Mr. Fontaine: Retourne dans ma présentation, je te parle des actionnaires originaux. The one that started the company, the escrow people.

Mr. O'Connor: Of which there are about--

Mr. Fontaine: Escrow binds only the original one. They do not bind the whole gang.

Mr. O'Connor: How many originals were there? About 30?

Mr. Fontaine: No, it is more than 30. We will have to check that.

Mr. O'Connor: It is more like what?

Mr. Fontaine: No, I said that I think--

Mr. O'Connor: It is 30 to 40 as I recall, having looked at the application for incorporation.

Mr. Fontaine: Probably.

Mr. O'Connor: Is that correct?



Mr. Fontaine: I do not know.

Mr. O'Connor: You are telling us then that there was an agreement reached among 30 or 40 people, or however many there were originally, to do the two things you have indicated in your statement? Is that right?

Mr. Fontaine: Yes.

Mr. O'Connor: Was there a meeting of all these people?

Mr. Fontaine: There was never a meeting of all people. We met probably once in a while, but there was never all the people there.

Mr. O'Connor: How was it this agreement came about among 30 or 40 people? Did you do it by phone, by letter, by meeting?

Mr. Fontaine: Paul Martin made the terms with each of the original shareholders. You could ask him that too.

Mr. O'Connor: It was totally oral? There were never any letters confirming this?

Mr. Fontaine: No.

Mr. O'Connor: There was never a meeting among all the people to do this?

Mr. Fontaine: Not that I remember.

Mr. O'Connor: He got the agreement of everybody to that effect?

Mr. Fontaine: You have to ask Mr. Martin about that.

Mr. O'Connor: You freely agreed to do the two things you have indicated, vote the shares as he indicated?

Mr. Fontaine: Yes, that is my own.

Mr. O'Connor: What was the other one? That you left it to him entirely to draw down your escrowed shares?

Mr. Fontaine: Yes.

Mr. O'Connor: You have indicated to us that you were a relatively small shareholder in comparison with some of the others?

Mr. Fontaine: I am talking about the original. I could be in the middle, yes.

Mr. O'Connor: You are also telling us, therefore, that some people with considerably larger investments than you have agreed on an oral basis to allow this one man, whom you have described as having alcoholic problems and other problems, to control totally their investment and that he has the right to draw down their escrow shares and he has the right to vote them as he sees fit? Is that correct? And there is nothing in writing?

Mr. Fontaine: I am not speaking for the other people. I am speaking for myself. Me, I agree with this.

Mr. O'Connor: You are going to get us the escrow agreement?

Mr. Pratte: Yes.

Mr. O'Connor: You have indicated that you forgot to list these escrowed shares, that you had forgotten about their existence? Is that correct? You also advised us you were dealing with the 45,000 shares. In your mind, that is all you owned in 1985 until you sold them? Is that right?

Mr. Fontaine: Yes.

Mr. O'Connor: You did remember those because you advised Ms. Eberts in the first declaration that you had them.

Mr. Fontaine: Which ones?

Mr. O'Connor: The 45,000 Golden Tiger shares.

Mr. Fontaine: Yes.

Mr. O'Connor: In fact, you did sell them in December 1985? Is that right? What I am getting at is, the fact that you owned shares in Golden Tiger was well aware to you. It was in your mind because you had filled in the form quite correctly in your own mind and you had further, that same year, last year, dealt with those shares by selling them on the open market. You had not forgotten about them. You are telling us you forgot about the 17,000 in escrow? Is that right?

M. Fontaine: J'ai oublié les parties, les actions qui étaient en main tierce. Je les ai oubliées.

Mr. O'Connor: Further, you have told us you had some conversations with Mr. Martin over the last year? Is that correct?

Mr. Fontaine: Yes.

Mr. O'Connor: You have said it was five or six conversations. Can you be more specific as to when they would have occurred? How many in 1985 and how many in 1986?

11:50 a.m.

Mr. Fontaine: Most of the conversations were between October and December. I said I met him personally in Val d'Or, he was there, and in the spring of 1986.

Mr. O'Connor: You did discuss the Golden Tiger situation in those telephone calls?

Mr. Fontaine: Remember that I told you in the statement what I discussed with him. I discussed his problems, his problem with his wife, and most of the conversation was on his personal problems.

Mr. O'Connor: Did you ever discuss Golden Tiger with him?

M. Fontaine: Vers le commencement de décembre, j'avais appelé le courtier lorsque j'avais eu l'ordre de vendre mes parts. J'avais appelé M. Carrier chez Osler Wills Bickle qui n'était pas là; alors j'ai appelé M. Martin pour qu'il dise à Carrier



que j'avais l'autorisation de mon comptable de vendre toutes les actions de Golden Tiger et celles de ma femme qui étaient là, les 3,000 actions.

Mr. O'Connor: Mr. Martin says in his conversations with you he urged you on several occasions to sell those shares. Is that not so?

Mr. Fontaine: No.

Mr. O'Connor: He is incorrect in that statement?

M. Fontaine: M. Martin ne m'a jamais dit de vendre mes actions. Je discuté de vendre les actions au mois de décembre. J'avais eu l'autorisation de mon comptable de vendre.

Mr. O'Connor: He never said anything to the effect that because of your position as an elected member and a minister, it would be a good idea to get rid of the shares? He never said that to you?

Mr. Fontaine: Not before I talked to him in December.

Mr. O'Connor: Not before you talked to him in December.

Mr. Fontaine: No.

Mr. O'Connor: Did you ever talk to him, and did he discuss with you before December about the filing of a prospectus with the Quebec Securities Commission for purposes of raising \$1.4 million?

Mr. Fontaine: No.

Mr. O'Connor: In fact, that with the raising of that money, the value of shares would increase?

Mr. Fontaine: No, he never said that to me.

Mr. O'Connor: He never expressed that to you?

Mr. Fontaine: No.

Mr. O'Connor: Were you aware that was going on?

Mr. Fontaine: No.

Mr. O'Connor: You were unaware that this company was filing a prospectus on July 10, 1985, seeking approval to sell shares to the public and to raise \$1.4 million?

Mr. Fontaine: No.

Mr. O'Connor: You had never heard of that?

Mr. Fontaine: No.

Mr. O'Connor: At that time you were a director of the company. Is that correct? Mr. Fontaine, you were a director of the company I believe until January 1986. Is that right?

Mr. Pratte: Sir, you have asked a question. I thought I had the right to advise my client.

Mr. Chairman: It is a little awkward because we do not do this every day. It is true that we have invited a witness and said that he could have counsel and, as a courtesy to him, we should let counsel advise him.

Mr. O'Connor: I am sorry, Mr. Chairman.

M. Fontaine: Sur cette question de financement au Québec -- si on en a parlé, ce n'est pas pendant l'été. C'est lorsque je lui ai dit de vendre les actions et il me semble qu'il m'a dit que l'émission qu'il avait faite était presque toute vendue. Cela avait à faire avec le Québec.

A ce moment-là, j'avais eu, avant, l'autorisation de mon comptable de vendre les actions et je lui avais également de les vendre. Cela n'avait rien à voir avec l'émission. It had nothing to do with this \$1,400,000 we were talking about.

Mr. O'Connor: Would you agree with me you were a director of the company until January 27, 1986? The records indicate that was when his resignation as a director was filed.

Mr. Pratte: Are you addressing the question to me?

Mr. O'Connor: I am talking to Mr. Fontaine.

Mr. Fontaine: I resigned from it.

Mr. O'Connor: You resigned your directorship on January 27, 1986?

Mr. Fontaine: No.

Mr. O'Connor: No? The records are incorrect? My point being, of course, that if you were a director until that point--

Interjection.

Mr. O'Connor: I am asking questions.

Mr. Fontaine: Wait a minute.

Mr. Pratte: We cannot answer four questions at the same time, sir.

With the chairman's leave, we have a letter of resignation dated in the summer. I do not have it here. It is in June or so of the summer, and I will produce it to the committee as soon as I can, after lunch perhaps. It is dated June 1985.

Mr. O'Connor: Notwithstanding that, the records do indicate that you resigned on January 27, 1986; at least, that is when it was formally filed with the Ministry of Consumer and Commercial Relations. Did you receive any correspondence, communication from the company in your capacity as a director or shareholder over the summer and fall of 1985?

Mr. Fontaine: No, I got nothing.

Mr. O'Connor: What you are saying then is you had no knowledge whatsoever of a company of which you were still a substantial shareholder, owning 45,000 shares that you knew of and 17,000 more shares that were in escrow; you were unaware that this company was applying for the right to sell a further \$1.4-million worth of shares in the open market?



Mr. Fontaine: No.

Mr. O'Connor: As a shareholder, did you not receive any kind of correspondence advising that your company was doing this?

Mr. Fontaine: No.

Mr. O'Connor: I can advise you that as a matter of law the company is required to advise its shareholders of its intention to do something of that nature, and you received nothing?

Mr. Fontaine: No. I got nothing on this.

Mr. O'Connor: You are saying you had no knowledge whatsoever of this underwriting during the summer and fall of 1985?

Mr. Fontaine: In December, he told me that he had sold it.

Mr. O'Connor: December was the first time you knew of it?

Mr. Fontaine: Yes.

Mr. O'Connor: It was Paul Martin who told you?

Mr. Fontaine: I discussed it with--

Mr. O'Connor: When was it he told you of the underwriting?

Mr. Fontaine: I told you, in December.

Mr. O'Connor: Before you sold your shares?

Mr. Fontaine: Before I sold?

Mr. O'Connor: Yes.

Mr. Fontaine: No, but I did it at the same time.

Mr. O'Connor: At the same time you were selling your shares?

Mr. Fontaine: Yes.

Mr. O'Connor: I suggest to you that he told you that as a result of the underwriting and the new financing in the company, his shares had gone up substantially in value. In fact, they had over doubled? Is that correct?

Mr. Fontaine: I do not know if they doubled or not.

Mr. O'Connor: What were they worth in June and July 1985? Forty-four cents? You do not know?

M. Fontaine: La valeur des actions n' avait rien à voir avec la vente. Mon comptable, dans mon document, ici, dit qu'il s'occupait de mes affaires; c'est lui qui, à un moment donné, m'a dit qu'il avait décidé de vendre mes actions; on ne les met pas dans le "blind trust" (fiducie sans droit de regard). C'est à ce moment-là que j'ai vendu.

That is the only reason. That has nothing to do with anything else either.

Mr. O'Connor: Are you telling us you do not know the value of the shares when you were elected and in June and July 1985?

M. Fontaine: Premièrement, je n'avais pas le temps de m'occuper de cela. Si j'avais eu le temps, je les aurais vendues lorsqu'elles étaient montées à \$1.50, il y a trois ans.

I did not sell them three years ago, so I did not have time to look at that. I do not have time even today to look at those dates.

Mr. O'Connor: Similarly, you had no knowledge then of the increase in value at the time you sold them in December 1985?

M. Fontaine: Mon comptable m'a dit de vendre et j'ai vendu. La personne qui s'occupait de mes affaires m'a dit de vendre et j'ai vendu.

Mr. Chairman: It appears to me that we may be doing business this afternoon, so this would be an appropriate moment to recess for the lunch break.

Before the committee recesses, I want to table with you three documents that we have received this morning. The first is the letter that you requested, with the date of September 23, 1985, from Blenus Wright. You asked for the exact copy, and we have that now.

The second document is at the request of Mr. Sterling, an attempt to take the statement of Mr. Brandt yesterday and to match that with the Legislative Assembly Act and the conflict-of-interest guidelines. The third piece of paper is the motion, which will be dealt with as soon as we have heard the witness today.

The committee recessed at 12:02 p.m.





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REVISED

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY  
ALLEGED CONFLICT OF INTEREST  
WEDNESDAY, JULY 23, 1986  
Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Laughren, F. (Nickel Belt NDP)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Johnson

Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Turner

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

Fontaine, R.

Pratte, G., Counsel to Mr. Fontaine; with Blake, Cassels and Graydon

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, July 23, 1986

The committee resumed at 2:09 p.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST  
(continued)

Mr. Chairman: We are ready to start our proceedings for the afternoon. Mr. O'Connor was in the middle of one of his questions.

Mr. O'Connor: On a point of order, Mr. Chairman: As I understood your ruling on my motion this morning, it was to delay discussion of it until this afternoon's proceedings. Does that mean now? I take it that it does. Accordingly, should we deal with that matter at this time?

Mr. Chairman: The problem I have is that the committee ordered by motion that the order of business for today would be the statement by Mr. Fontaine and then members would have the opportunity to ask questions. You, personally, are in the middle of asking questions. I had interpreted that to mean that when the members of the committee had finished their questioning this afternoon and we have dealt with this witness, the next order of business would be your motion. Is that reasonable?

Mr. O'Connor: I am content with that. I thought you had said we would deal with it.

Mr. Chairman: I do not want to interrupt you in mid-question here.

Mr. O'Connor: Okay.

Mr. Chairman: Mr. Fontaine, you had something you wanted to say.

Mr. Fontaine: First, I would like to give you my letter of resignation dated June 28, 1985; this is the effective date.

Mr. Chairman: You mean 1986.

Mr. Pratte: No, 1985. We are talking about the Golden Tiger resignation. I think that satisfies one undertaking.

Mr. Fontaine: I would like also to clarify for the committee that I deplore the comment made by Mr. O'Connor to the effect that I left some of my business in the hands of an alcoholic friend, or something like that. I take seriously the present problem of Paul, which led to his drinking and affected his health in the fall. If you look at my statement, I was talking to him about his sickness at that time in December, because the commitment in my life as an ex-alcoholic is to help others who are suffering from that, and I will do that again because Paul is a friend of mine. He will still be a friend. I am going to help him to that effect. I trust him too. I am going to help him to try to recover from this sickness.



Third, with respect to those escrow shares and Mr. O'Connor's statement that there was another automatic release, all I know is there has been no release since February 1983. When my lawyer asked for an escrow share release, the commission said no. As I explained in my statement, they will allow a transfer within escrow to a deferrable institution. Obviously, therefore, there is no automatic release. I expect that this afternoon documents will demonstrate that the release is not automatic, but depends on the work done by the company when it applies.

There was another thing. We refer to Golden Tiger in Ontario. Golden Tiger is a Quebec company. About 90 per cent of its work is done in Quebec.

Mr. Chairman: Are we ready to let Mr. O'Connor proceed with his questions now?

Mr. O'Connor: Just on that last point you make, would you agree with me that Golden Tiger holds some 900 claims in Ontario?

Mr. Fontaine: Golden Tiger of Ontario?

Mr. O'Connor: No. Golden Tiger, which is a Quebec company, as you pointed out, and does substantial business in Quebec, nevertheless holds some 900 active mining claims in Ontario.

Mr. Fontaine: In partnership with Getty.

Mr. O'Connor: Getty Oil Ltd., as a joint venture with Getty Oil. Is that correct?

Mr. Fontaine: He spends 90 per cent of his money in Quebec.

Mr. O'Connor: One other point I might comment on was your reference to my comments that release of further escrowed shares was something of an automatic thing. I do not believe I said that. If I did, I do apologize to you. What I indicated was that my interpretation of the Quebec Securities Commission regulations was that you, as an insider--and the wording is quite clear--have the right, annually, to apply for 10 per cent. The release of them must be approved by the Quebec Securities Commission, but our information, as a result of a phone call as late as today, is that there has never been an application for those shares, that they would consider favourably such an application had you made it.

Further, you have indicated in your statement today, I believe, that you applied or talked to the commission about transferring the shares to your foundation in Hearst. They have never heard of that, according to this gentleman, nor have they received any application. Have you any comment on that?

Mr. Fontaine: We have a letter here, but my lawyers did that--what you are talking about. I am not a lawyer and I do not know all the implications of those companies. As I said at the beginning, I am not a mining magnate. I have a hard time to operate my sawmill in Hearst. I was there to help somebody.

Mr. O'Connor: Perhaps if there is documentation substantiating that, it can be produced.

Mr. Fontaine: It is in the hands of the lawyers.

Mr. O'Connor: One other point, I might say by way of--

Mr. Pratte: Mr. O'Connor, the record should be clear. There is a letter and I will provide you with copies, I think this afternoon, as long as the photocopying can be done.

Mr. O'Connor: Do you know, Mr. Fontaine, when the letter was sent?

Mr. Fontaine: Two weeks ago.

Mr. O'Connor: On one other point arising from this morning, I asked you for a copy of the escrow agreement. I do apologize to you, Mr. Chairman, and the witness in that we did have a copy in our lump of material here which is now approximately two feet thick. I, therefore, have that and you need not fulfil that undertaking.

There are two points to make from that. There is some assistance as to the number of originating shareholders, an issue, we kicked around this morning. By my count, there are 39 of them. Do you agree that this is approximately right?

Mr. Fontaine: I do not know, je ne le sais pas.

Mr. O'Connor: From the number of shares held by each, it appears that you are the eighth largest of the 39 shareholders in the company or you were at the beginning.

What appears from the escrow agreement, Mr. Fontaine, is that there is no indication in the agreement itself as to any conditions under which you may obtain or apply for the escrow shares. It does indicate that these conditions are set out on the share certificates themselves. That being the case, is it possible for you to produce for us the share certificate for the 19,080 shares that you originally placed in escrow?

Mr. Fontaine: On the letter, I do not think there was--we will try to get it. Moi je comprends que c'est la Commission qui décide si on peut libérer les actions...les parts en tiers. C'est comme ça que je l'ai compris.

Mr. O'Connor: You mean out of escrow. That is a matter of interpretation. I will not go into that or argue that with you.

Mr. Fontaine: Je ne suis pas avocat. Tu dois le savoir. I went to school for about two years and that is it. You are a lawyer and you should know.

Mr. Chairman: It will help if you repeat the question.

Mr. O'Connor: All I am asking for is a copy, perhaps a photocopy, of the share certificate for the 19,000 shares. I understand that the conditions of release are printed on the share certificate. It would help us to determine how, when and under what conditions you can get them.

Mr. Fontaine: We will try. On va essayer de les obtenir.



Mr. Chairman: I want to intervene. We have had a number of requests for documents and things of that nature. I want you to be clear that we have taken the stance since the initiation of the hearings that we will ask people for documents. That is our first resource, to give them to us voluntarily. So far everybody has done that, from the Premier's office on down. That may be because we also have a motion of the House that allows us to get a Speaker's warrant to get the documents if you do not want to surrender them voluntarily. What I am saying is that if the documents are available at all in Ontario or perhaps even elsewhere, there are two ways this committee will get them. We will ask for them nicely and you will produce them voluntarily or we will use a Speaker's warrant and we will get them that way.

Mr. Pratte: Mr. Chairman, I do not want my answer to be construed in any way as reluctance, but I do not have the share certificate asked for. I think it is probably with Guaranty Trust in Montreal. I will undertake personally to make all efforts to get it to you. That is all I can say.

Mr. Chairman: That is fine. I just want people to be clear that when members of the committee ask for documents, however simple or complicated it might be to get them, we are urging them to do it voluntarily. The use of a Speaker's warrant is something we are a little reluctant to do, but the committee is equipped with that. If it asks for it by motion, it will have a right to get the documents.

Mr. Pratte: I do not know whether this is of any assistance. I have a copy of the July 17 letter. I am sorry I have only one copy.

Mr. Chairman: We can make lots of copies.

Mr. Pratte: If it makes sense in the flow of things, I have a letter addressed by Clarkson Tétrault on behalf of Mr. Fontaine to the commission asking for permission to release the shares, as he described in his statement, to la Maison Renaissance de la réhabilitation. I believe that is the document Mr. O'Connor wanted.

Mr. Chairman: Let me suggest this to you. If you have single copies of matters such as that which you would like to table with the committee, if you provide one copy to the clerk, she will be happy to provide copies to all members.

Mr. Martel: Maybe just producing the paper will give the information we want.

Mr. Chairman: The pulp and paper industry is in no trouble.

2:20 p.m.

Mr. O'Connor: Mr. Fontaine, am I correct that this letter is dated July 18? That may be why the commission has not yet received it in that it is less than a week.

Mr. Pratte: Sir, it confirms oral conversations that they have had. I do not want to testify, Mr. Chairman, but you will understand that these are things I have dealt with on Mr. Fontaine's behalf upon his instructions. But to be of assistance to the committee, because Mr. Fontaine will have to ask me, what has happened is that Clarkson Tétrault had contacted the commission and basically had an oral understanding that it would make the application. It is confirmed on the letter, which you will get in a few minutes.

I just realized as I looked at the letter that it is in French. I do not know if that will cause you a problem.

Mr. Chairman: Pas de problème. We do not have to read it in French.

Mr. Martel: Dick Treleaven will look after it for us.

Mr. Chairman: On that point, feel free to table documents in either language. That is not a problem. We can translate, not instantaneously it appears, but with a few hours' notice we can provide that.

Mr. Pratte: I am sorry, Mr. Chairman.

Mr. Chairman: You can table your documents in either language; it is no problem.

Mr. Pratte: May I just have a moment, Mr. Chairman? In respect of the information that was just asked for, for the certificate, I do not know if this will assist Mr. O'Connor, but as you know, one of the attachments to Mr. Fontaine's statement is a letter of January 7, 1983, from Guaranty Trust, which he explained is the one that triggered his memory. There are two letters in French, but it speaks about the certificate in question. It sets out that the release is subject to the commission. It refers to the contents of the certificate to that effect.

Mr. O'Connor: That is exactly my point. The commission always has the final say to release or not. As I interpreted Mr. Fontaine's statement in the House several weeks ago, and today, he feels he has absolutely no right of authority or control of those shares whatsoever.

Mr. Pratte: No. What I am saying, Mr. O'Connor, is that the certificate says the release is subject to the policy requirements of the Quebec Securities Commission's being satisfied. That is what Mr. Fontaine has just said, and what his statement says, that it is up to the commission to see whether its criteria are satisfied. I gather it has policy statements and it depends on the work in progress. All the certificate does is refer to the commission and say, "You decide when we can release it." I just thought I ought to point out that document.

Mr. O'Connor: To go back to my point, in the House he said he had no control over them whatsoever, that they were totally in the control of someone else, that he was not able to have any influence on the release of the shares.

The Quebec Securities Commission's rules and regulations, I would point out, provide that up until the start of work--one does not even have to start active work on the claims--an applicant is entitled to, subject to approval of the commission, 10 per cent of those shares per year.

I am trying to show that throughout the last several years and to the point where he divested himself, if he has not done that, of his escrow shares, there was some right in Mr. Fontaine to apply for it. Furthermore, he has the right to vote them, subject to his oral agreement with Mr. Martin.

Mr. Pratte: He has already given an answer, sir, that he just applied and was turned down.



Mr. O'Connor: To capsulize where we were at the time we broke for lunch, we were talking about the prospectus and an underwriting by the company last year. I have been able to dig that out of the file. You may have seen, for your own reference, the copies of the prospectus and an amendment to the prospectus, which are dated respectively October 16 and October 29. I refer to the July 10 date, the date when a draft prospectus was first filed with the Quebec Securities Commission. These are the final versions of that prospectus.

The company applied for and was granted the right to issue shares and warrants to raise the sum of \$1,437,500. My questions to Mr. Fontaine were, given that activity by a company in which he was a substantial shareholder, did he have any knowledge of that going on, keeping in mind the legal requirements of a company to hold meetings, to advise its shareholders, to give notice of activities of that nature, particularly because the issuance of further shares would have the possible effect of diluting or watering down his own shareholdings. It is a matter of law. Given all of that, did you not have any notice or inkling whatsoever that the company was doing this?

Mr. Fontaine: I told you this morning what Mr. Martin told me. J'en ai parlé ce matin, et puis c'est ça la question.

Mr. O'Connor: Until December.

Mr. Fontaine: December.

Mr. O'Connor: Going back again, if I may for a moment, to your conversations with Mr. Martin. I just want to identify the three or four places in which you and Mr. Martin appear to disagree on what was discussed. Mr. Martin says that in those conversations he discussed with you Golden Tiger and its ongoings until December, and you disagree with that. Is that correct?

Mr. Fontaine: Voulez-vous répéter? Can you repeat this one?

Mr. O'Connor: I think you have just told us that you disagree with Mr. Martin, who in a news report has indicated that he talked frequently with you about Golden Tiger. You say he is wrong in that regard. You said so in your statement this morning. That is one area where you disagree.

Mr. Fontaine: C'est M. Martin qui a dit ça aux journaux. Alors je n'ai rien à juger sur ce que M. Martin a dit. J'ai dit ce matin que je n'ai discuté d'aucune de ses affaires de mines ou de ventes d'actions avec lui - ce dont vous avez parlé tout à l'heure. Je n'ai eu aucune discussion avec lui. Si lui a dit cela, c'est son affaire. En ce qui me concerne, je l'ai dit ce matin dans mon document et je le répète, je n'ai eu aucune conversation à cet effet.

Mr. O'Connor: Nor with the \$1.4-million undertaking? Nor did he urge you to sell your shares?

Mr. Fontaine: I said that at the time he told me everything, in December, he talked about the \$1.4 million.

Mr. O'Connor: Yes, but prior to that he had not.

Mr. Fontaine: No.

Mr. O'Connor: Nor at any time did he suggest to you you should sell your shares in Golden Tiger?

Mr. Fontaine: I do not recall this.

Mr. O'Connor: This morning you told us he did not say that. Do you now--

Mr. Fontaine: No, you said that. You asked me that question, yes.

Mr. O'Connor: This morning you told us he did not say that to you. Now you are saying you cannot recall. Is that correct?

Mr. Fontaine: About the \$1.4 million?

Mr. O'Connor: His advice to sell your shares.

Mr. Fontaine: No. Il ne m'a jamais donné le conseil de vendre ces actions.

Mr. O'Connor: The last point I think you disagree on is about a news report. I am reading from a report by Ciaran Ganley of the Toronto Sun on June 26, 1986, wherein he says in part, "He said he's also talked to Fontaine about introducing tax shelters in Ontario to help the mining industry." Did he talk to you about that?

2:30 p.m.

Mr. Fontaine: I told you that in the statement today about flow-through shares, every promoter or every developer in Ontario is after them. As you recall, in the House we formed a committee to study this issue in Ontario. If you were reading my speeches that I made since August, the disclosure--Dans les discours que j'ai faits depuis le mois d'août, j'ai tout le temps dit que les compagnies de l'Ontario devait être en concurrence avec le Québec. Dans tous les congrès qui ont eu lieu, et même lorsque nous sommes allés à l'Ile-du-Prince-Edouard avec d'autres ministres du pays, il y a eu une discussion sur les "flow-through shares" et cela a été présenté par les associations qui voulaient que l'Ontario s'implique dans cela.

Et si vous vous souvenez, au congrès du mois de mars à Toronto où les prospecteurs et les développeurs se promenaient avec un médaillon sur lequel était marqué "We Love Flow-Through Shares". Il n'y a là rien de nouveau dans cette chose-là: Les gars du Québec et de l'Ontario attendent depuis deux ans que les gouvernements, surtout le gouvernement de l'Ontario, changent leurs lois. Les lois n'ont pas changé et on étudie actuellement la Loi sur la taxation, on est en train d'étudier la Loi sur les développements des mines en Ontario ainsi que la Mining Act--la nouvelle Loi sur les mines. Le livre blanc est ouvert: tout le monde peut apporter des commentaires.

Mr. O'Connor: Some of the translation was not all there. Maybe it was.

Mr. Chairman: I think someone ran for home plate when he should have stayed at third.

Mr. O'Connor: To summarize what you said, is it fair to say that as Minister of Northern Development and Mines you were receiving representations and comments from numerous people at numerous times, including Mr. Martin from time to time. Is that correct?



Mr. Fontaine: I did not say "from time to time," Monsieur. Ce n'est pas ce que j'ai dit. J'ai dit que'on en a discuté une fois et j'en parle ici.

Mr. O'Connor: "One time." When was that one time? Was that with Mr. Martin?

Mr. Fontaine: It is in the statement over here. C'est dans l'état ici.... Avec le prospecteur au mois de mars. Et puis lorsque j'ai parlé au Québec, au mois de mai de cette année, tout le monde à Val d'Or.... Mais je veux répéter--après avoir vendu toutes mes actions. La commission Thompson sur le financement des mines juniors en Ontario et sur les autres programmes, a été mise en place le 6 ou le 8 février, lorsque nous étions à Timmins pour le Cabinet.

Mr. O'Connor: Did he speak to you about those matters, that is, tax shelters in Ontario, at any time last year, 1985?

Mr. Fontaine: Non, je ne me souviens pas.

Mr. O'Connor: May I ask you about something else now? Looking at your statement of this morning, you have attached to it, and I think it is the first time we have seen it, the form you filled in for Mary Eberts, who I understand was attached to the Premier's office at the time. I think she was a member of the transition team or some such thing. Do you know what her position was with the Premier's office when you dealt with her?

Mr. Fontaine: Can you repeat the question?

Mr. O'Connor: Do you remember Mary Eberts?

Mr. Fontaine: Yes.

Mr. O'Connor: Do you remember speaking with her and dealing with her?

Mr. Fontaine: Yes.

Mr. O'Connor: According to your statement, you filled in a form for her.

Mr. Fontaine: Not me.

Mr. O'Connor: You did not fill in the form.

Mr. Fontaine: No. I said it in my statement; it was orally.

Mr. O'Connor: She filled in the form.

Mr. Fontaine: Yes, my accountant and I--it was orally. She continued to work at it and I received that in the mail.

Mr. O'Connor: That was in July 1985?

Mr. Fontaine: Au mois de juillet 1985. Mais elle, je l'ai rencontrée à la fin de juin.

Mr. O'Connor: If I can refer you to that statement, you will notice that on the fourth page you reveal your interest in United Sawmill Co. Ltd. and in Golden Tiger Exploration Co. Inc. If I can read it for the record, the wording typed there is, "This mining company is doing exploration work for which government grants are received." Do you see that?

Mr. Fontaine: Yes.

Mr. O'Connor: That was at a point when you were minister of mines. Is that correct?

Mr. Fontaine: Yes.

Mr. O'Connor: You reveal that you and your immediate family members own 45,000, 3,000 and 28,000 shares. Is that correct?

Mr. Fontaine: Yes.

Mr. O'Connor: Was there any suggestion at all from Mary Eberts or anybody else in the Premier's office at that time that you, being the minister of mines, holding many thousands of shares in a mining company for which government grants were being received, the prudent thing to do would be to divest yourself of those shares right then and there?

Mr. Fontaine: Premièrement, c'est non à la question. Personne ne m'a dit que, tout de suite demain matin, je devais tout vendre. Deuxièmement, vous parlez ici des subventions OMEP que tous ceux qui veulent exploiter une mine peuvent demander. D'autre part, comme député conservateur au pouvoir depuis longtemps, vous devez savoir que le ministre n'a aucun pouvoir sur OMEP. L'homme qui est responsable de ce programme - c'est vous qui l'avez mis en place et d'après ce que je sais c'est un homme qui est nommé par un ordre en Conseil.

Dans ma vie, pour le peu de temps que j'ai été ministre, je ne sais même pas où est son bureau. Je l'ai rencontré lorsqu'on m'a donné les directives ministre, puis une ou deux fois après et c'est tout. Tout est fait par lui; c'est lui qui décide du mot final. C'est un plan, c'est un programme, c'est une politique législative. Ce programme est administré par cet homme-là. J'ai de la misère à dire son nom. Je ne le sais même pas son nom. Je me tromperais si je le disais.

Mr. O'Connor: This man is employed by the Ministry of Northern Development and Mines? He is one of your officials, is that correct?

Mr. Fontaine: Il l'était oui, mais là je crois qu'il est rendu au Trésor. Mais comme vous savez, les personnes qui étaient dans mon ministère ont réellement été officiellement déménagés ou transférées au ministère des Mines; c'est seulement devenu officiel au mois d'avril. Et deuxièmement, je répète, c'est lui qui a l'autorité ultime sur ce programme... Puis moi, la seule place où je peux agir, c'est s'il y a un appel.

Mr. O'Connor: Regardless of the personnel involved and where they are now, this man's position is as an official in your ministry. He has the right, the duty, the obligation to receive applications for grants by mining companies and to approve or otherwise those grants. Is that correct?

Mr. Fontaine: Yes.



Mr. O'Connor: Here are you, the minister of mines, his ultimate boss, owning substantial shares in a mining company, by which according to your declaration government grants are received. Regardless of whether Mrs. Eberts or anyone else told you to get rid of those shares or not, do you think yourself, Mr. Fontaine, that it is appropriate for a minister of mines to be in that kind of position, to hold shares in a company to which his own ministry is granting money?

Mr. Fontaine: Je vous répète que je n'ai rien eu à faire avec cette loi ou la demande de certains subsides. Et c'est cet homme qui administre ce programme; il a été nommé là par un ordre en Conseil. Et comme ministre, je n'avais rien à faire avec ça. J'ai une lettre qui dit la même chose que ce je vous dis là.

Mr. O'Connor: I will not belabour the point, but you are his boss, you are in charge of policy for the ministry of which he is an official. It is an order in council that issues those grants and you are a member of the council that is making those orders. Regardless of whether technically you have influence over it--and I suggest you have very great and direct influence over the issuance of such grants--

Fontaine: C'est toi qui penses ça.

2:40 p.m.

Mr. Pratte: In fairness, sir, on what basis do you suggest that?

Mr. O'Connor: Because he is the minister of mines.

Mr. Pratte: Mr. Chairman--

Mr. O'Connor: I am questioning the witness.

Mr. Chairman: Part of the problem here is that the questions are being directed generally at two people. That is part of the problem. I want to stop it here and say that the questions are directed to the witness, Mr. Fontaine. Mr. Fontaine will answer them.

I have deviated from that on a couple of occasions because it seemed obvious to me that his counsel had information that could be readily presented to the committee. Perhaps I have erred in doing that. Perhaps I should have made his counsel tell Mr. Fontaine, who is sitting next to him, the information and then Mr. Fontaine could relay that. Pardon me, I am from Oshawa. I thought it would be smarter to let him say it directly. If we get into interplay back and forth, we will get very strict in this and the only person who will speak will be Mr. Fontaine.

The fault lies on both sides, as I see it. If you ask a question to both people and either one can answer, that is what will happen. The theory is you ask a question to the witness and the witness replies. We will try to adhere to that. I think if we just slow the pace down a little bit, we will resolve some of the problems.

Mr. Mancini: How does counsel exercise his responsibility to object to certain questions if you do not allow him to speak?

Mr. Chairman: Simply as a practical matter, counsel had the answer and I thought it would expedite the process to let counsel answer. I do not want counsel to intervene between a member of the committee who has asked an obvious question of the witness. I think that is what just happened.

Mr. Pratte: I apologize, but I have the answer on this. We have a letter of the counsel of the department in question, which confirms what Mr. Fontaine has said. I will produce it within the hour from my office. It simply sets out what this program is all about and confirms that Mr. Fontaine has no legal responsibility whatsoever for this program nor has he been involved in any way in it. I think that expedites matters.

Mr. O'Connor: Regardless of what that letter says, I would simply leave it with this comment. If you are the minister in charge of a ministry in which officials are designated to make a decisions, you with the ultimate responsibility must take responsibility for those decisions. Furthermore, you have indicated yourself that if a decision is taken by that person which is unacceptable to the applicant, you are the court of appeal. In that way, you become involved in the issuance or nonissuance of mining grants. Is that not correct?

Mr. Fontaine: Moi je crois que je n'étais pas dans un conflit, d'après ce que vous me dites là. D'après les conseils que j'ai reçus, je n'étais pas dans un conflit.

Mr. O'Connor: One last question in this area and then I will move on, if I may. Again, to go back to my first question, what do you personally think of the perception that is created in the public of a minister of mines holding shares which are receiving grants from his ministry? Do you think that is acceptable? Do you think that fits within the spirit of the guidelines developed by your Premier?

Mr. Fontaine: Among honest people, I think there is no problem. We dealt within the law, and I told you before I had nothing to do with this law. It is administered by somebody else. They gave me time to sell my shares and I sold them, and everything is over here on the table.

Mr. O'Connor: You have indicated that the question of your escrow shares which you had forgotten to include in your statement came to your attention in March. Is that correct?

Mr. Fontaine: Yes.

Mr. O'Connor: At that point why did you not file an amendment to your disclosure statement with the Clerk of the House to indicate that you held those shares?

Mr. Fontaine: Dans mon document, je dis pourquoi j'ai averti mon avocat et c'est lui qui avait ça en mains. Et moi, je lui ai laissé ça. Et on en a parlé à Blenus Wright au courant du mois de mai - tout est ici là-dedans dans le document.

Mr. O'Connor: They were sold in May?

Mr. Fontaine: Ecoute-là, j'ai dit tout à l'heure que quand je m'en suis aperçu, j'en ai parlé à mon avocat et c'est lui qui avait ça dans les mains. Lisez le document, c'est marqué là.

Mr. O'Connor: When did you speak to him about it?

Mr. Fontaine: Early March, around March 6 or March 10. I was in Florida until the end of February. When I came back in March, I saw this file



on my desk. I glanced through it and I saw this letter from Guaranty Trust. I phoned my lawyer. I met with him in Hearst on Sunday, March 16. I phoned him and said, "I will meet with you in Hearst and discuss that," and I showed him the letter. J'étais à Toronto et lui était à Kapuskasing. On s'est rencontré à Hearst chez ses parents le 16 mars. Puis lui a communiqué avec... Lisez le document, tout est là.

Mr. O'Connor: You met on March 16, and nothing happened until May.

Mr. Fontaine: Le document est là. J'ai demandé à mon avocat de s'en occuper et il s'en est occupé. Je ne peux pas faire plus que ça.

Mr. O'Connor: Did it not occur to you--

Mr. Fontaine: Peut-être qu'il aurait dû aller plus vite, mais des fois les avocats, ça prend du temps hein! Tu dois le savoir, toi. I deal with lawyers, too, you know. Sometimes they are quick; sometimes they are slow.

Mr. O'Connor: Present company excluded. Nothing having happened for some two months as a result of your March 16 meeting, did it not occur to you at the end of March through April that you had better get back to him and get him moving because it would cause you some serious problems, not having declared this to the House?

Mr. Fontaine: J e t'ai dit que mon avocat avait ça dans les mains, puis je t'ai dit tout à l'heure, peut-être qu'il n'a pas fait ça assez vite mais c'est lui qui avait ça dans les mains. Je ne suis pas son chien de garde. Je ne sais pas ce qu'il a fait moi entre le mois de mars et le mois de mai. Moi, je sais ce que j'ai fait : j'ai visité tout le nord de l'Ontario. J'ai fait au moins 30 discours dans ce temps-là, dans le nord de l'Ontario. Je n'avais pas le temps de suivre l'avocat. Il était à Kapuskasing et moi j'étais à Moosonee ou à Fort Frances. Je ne sais pas, c'est lui qui avait ça dans les mains et il s'en occupait. Je t'ai dit tout à l'heure peut-être qu'il n'a pas fait assez vite. Je ne suis pas là pour le juger. Je lui ai donné et je lui ai dit: "Occupe-t-en".

Mr. O'Connor: As with the subject we just dealt with, you being the Minister of Northern Development and Mines and ultimately responsible for grants, were you not ultimately responsible for the people you designate to do these jobs for you, your accountants, your lawyers, Mary Eberts and everyone else you are blaming for your difficulties right now?

2:50 p.m.

Mr. Fontaine: Je n'ai pas blâmé tout le monde. J'ai dit que j'avais des responsabilités. Dans mon document, j'en parle - que j'aurais dû peut-être m'en occuper plus; j'en prends la responsabilité. Je ne porte pas tout le blâme sur mes avocats ou d'autres personnes. On était tous nouveaux; peut-être qu'on a fait des erreurs. Moi, j'aurais dû les suivre plus, mais je ne l'ai pas fait. Alors, qu'est-ce que tu veux?

Mr. O'Connor: On another subject, your address in Hearst is box number 1903. Is that correct?

Mr. Fontaine: Ask my wife. I do not know. Mine is 880. Is it the box number or the street number?

Mr. O'Connor: The box number.

Mr. Fontaine: Then 1903. It looks like it.

Mr. O'Connor: That is the address that you used as your formal address while a member of this Legislature and as a minister?

Mr. Fontaine: Yes; 880 was my company address, the box number.

Mr. O'Connor: There are five other names that are shown as holders of that box also. Perhaps you could tell us who they are.

Raymond Alary? Is he a relative or friend of yours?

Mr. Fontaine: Friend. He is a Conservative too, a good Conservative. He is the one who picked up all the money for Piché in the last election.

Interjection.

Mr. O'Connor: You do not want to get political in this.

Mr. Fontaine: He is the one who collected the money for René Piché in the last election.

Mr. Chairman: We made a ruling on it. There is no such thing as a good Conservative.

Mr. O'Connor: Gilles Blouin?

Mr. Fontaine: Yes. He is a young man from Smooth Rock Falls.

Mr. O'Connor: And Raynald Blouin?

Mr. Fontaine: Yes, from Smooth Rock Falls, his father.

Mr. O'Connor: Are they friends or relatives?

Mr. Fontaine: Friends.

Mr. O'Connor: Fern Girard?

Mr. Fontaine: He is a contractor in Hearst.

Mr. O'Connor: And a friend?

Mr. Fontaine: Not to say a friend. Everybody is my friend in Hearst.

Mr. O'Connor: Ron Leblanc.

Mr. Fontaine: He is a man from Longlac.

Mr. O'Connor: And a friend?

Mr. Fontaine: I met him at a church meeting. That is about all.

Mr. O'Connor: I ask that because these five names are shown as substantial shareholders in Golden Tiger also, in that Alary owns 5,000



shares; Gilles Blouin, 1,000; Raynald Blouin, 7,000; Fern Girard, 1,000; Ronald Leblanc 3,000 shares.

Mr. Fontaine: Yes.

Mr. O'Connor: You have indicated this as your home address?

Mr. Fontaine: Yes.

Mr. O'Connor: And these gentlemen share a box with you and are substantial--

Mr. Fontaine: They do not share a box with me.

Mr. O'Connor: I will advise you that they are shown on the records of Golden Tiger as shareholders and that their home address is Box 1903, Hearst.

Mr. Fontaine: I do not know why--

Mr. O'Connor: Can you tell us how that came about?

Mr. Fontaine: Yes. An option was sold. An option was sold at one time and I... j'ai ramassé l'argent et j'ai envoyé ça à Montréal et les actions sont arrivées à mon adresse, chez-nous. C'est ça le problème. Lorsque la distribution des actions s'est faite, elles sont arrivées à mon adresse. Je crois que les personnes, aujourd'hui, devraient avoir rectifié ça... mais moi je ne le sais pas. Mais tout de même, c'est arrivé comme ça.

Mr. O'Connor: Why would these gentlemen use your home address for their home address?

Mr. Fontaine: Ce qui est arrivé: j'ai pris l'argent des chèques et c'est arrivé que j'ai l'ai envoyé à Montréal. Puis les actions, c'est à mon adresse qu'ils ont tout envoyé, chez nous, à mon adresse. Ça fait trois ans de ça.

Mr. O'Connor: Why would you send money for them to buy their shares?

Mr. Fontaine: Je l'ai dit dans mon document que j'ai aidé M. Martin à ramasser de l'argent pour sa compagnie. Il avait cette option à vendre et moi je l'ai aidé à la vendre à Hearst, à Longlac, à Smooth Rock Falls et lorsqu'il a envoyé ça, il l'a envoyé à mon adresse. Alors, je leur ai donné leurs actions et ce sont eux qui les ont chez eux. Appelle Leblanc, puis Blouin; puis appelle les deux Blouin et Alary. Ce sont eux qui les ont, les actions. They got those shares with them and someone must be the broker, I do not know, but still--

Mr. O'Connor: It was their money?

Mr. Fontaine: Their money, yes, and their shares.

Mr. O'Connor: And their shares. And you have no agreement or arrangement with them--

Mr. Fontaine: Ils les ont les actions.

Mr. O'Connor: Except that they are still showing your box as their home address. The point I make is that because they are shareholders, would you agree that they would be receiving routine mail from Golden Tiger? They would be receiving notices of meetings, a notice of the underwriting of last year. At some point, there is likely to have been similar documentation sent, not only to these five people but also everyone else who shares that box, which appears to be yourself, your wife as a shareholder and your children as a shareholder. One day there may have arrived in that box eight or 10 documents about the underwriting you say you have no knowledge of. Is that possible?

Mr. Fontaine: Je dois dire franchement que je n'ai pas vu de documents de Golden Tiger depuis au moins deux ans. S'il y en a eu, moi, je ne les ai pas vus. Si tu as des renseignements que je n'ai pas eus, dis-le moi, montre-les moi .

Mr. O'Connor: On another subject, if we can refer to your statement of this morning, page 13 specifically--

Mr. Pratte: Mr. Chairman, I asked of you and you kindly said that if there were going to be new allegations, we would know about it. In view of the recent line of questioning, is Mr. O'Connor in possession of some document that has not yet been part of the proceedings that suggests, or some fact that suggests, that we have received documents of Golden Tiger? That is sort of a new line of inquiry we have not heard about.

Mr. Treleven: In answer to the solicitor's question, and he averred to it earlier this morning, we are not in a situation where each side has been served with a notice to produce, to stop that kind of thing. Many of us do not know what we are going to ask until we start asking. It is not a situation where you can have notice to produce ahead of time.

Mr. Chairman: Just to clarify for a moment, the member is quite free to ask any question he sees fit. At some point, the committee may ask him to substantiate his line of questioning by producing some documents, but it will be the committee that does that.

Mr. Pratte: Thank you.

Mr. O'Connor: If I can comment on the point just made, all I did was ask him, in relation to five names, how they came to be shown as shareholders with a home address the same as his. I think he gave an explanation, which I accept. I therefore suggested, since there are about eight or nine shareholders occupying and using the same home address, the volume of mail from Golden Tiger, which by law has to be sent to all shareholders, routine stuff such as notices of meetings, would be such that he must have known, must have seen some of this stuff. It would have choked his mailbox so that he could not have got into the thing, if you look at the size of the prospectuses that were sent--eight or nine copies of that.

Ms. Hart: This seems to raise a point of procedural fairness. Whether this be a court of law or whether this be a legislative body passing on our colleague, we are passing judgement. It seems to me that, regardless of what tribunal or group of people is making that decision, it is an element of basic fairness that if we have allegations--and questions were asked yesterday, are all the facts out on which you rely? Are all the allegations before us?



I am very uncomfortable proceeding further, because these allegations have not been raised previously. Either we are on a fishing expedition, and it seems to me that goes well beyond the purview of this committee, or we are contravening basic principles of fairness, which we are all governed by since we are all governed by the Charter of Rights.

Mr. Chairman: Without getting too strict about it, I frankly have not heard an allegation yet. I have heard a line of questioning about why certain addresses, which the committee has been made aware of, were being utilized and how they were utilized. At the point that someone would want to make an allegation, at that time you would be quite right. But so far, what I have heard is what you described, I think reasonably accurately, as something having to do with angling, asking questions to see if there is a bit more than appears to be there. That seems to me to be fair. That is what a parliamentary committee does; it asks questions until it thinks it has found some answers.

3 p.m.

Ms. Hart: If I might, the allegation that I hear clearly is that Mr. Fontaine must not be telling the truth because his post office box would have been full of mail and it must have come to his attention.

Mr. Chairman: What I heard was a member ask why the same postal address is being used by a number of people. I heard the witness respond with an answer and I heard the person who asked the question say that seemed a reasonable explanation. In my book, that is a long way from being an allegation.

Ms. Hart: I would like it shown on the record that the next question, which had to do with the volume of mail in the box, made it an allegation.

Interjection: The mailbox was choked.

Mr. Chairman: That is an interesting point of view.

Mr. Martel: Can you tell me where I can get a copy of this in the Queen's English so I can understand it.

Mr. Chairman: Let us get back to business here. Mr. O'Connor, do you have any further questions?

Mr. O'Connor: I want to refer you to page 13, paragraph 40, where you deal with a further asset that had not been previously disclosed and involves some 20,000 shares. Am I correct that you indicate you received no share certificate?

Mr. Fontaine: No.

Mr. O'Connor: Or no acknowledgement of your \$200 whatsoever?

Mr. Fontaine: Sur cette question-là, tout est ici. Tu n'as qu'à lire le paragraphe 40, tout est clair là-dedans; c'est exactement ce qui est arrivé.

Mr. O'Connor: As a shareholder of a company, did you ever receive routine notices of meetings and routine financial statements, anything of that nature, over the years?

M. Fontaine: J'ai déjà dit que tout ce qui se rapporte à cette compagnie là, est là. C'est ma réponse. Ce n'est pas plus long que ça.

Mr. Chairman: I have had a request for a recess. Are there any objections if we take a break until 3:10 p.m.?

The committee recessed at 3:02 p.m.

3:13 p.m.

Mr. Chairman: I think we are ready to proceed. Before we do, I am going to make a little request of those who are in attendance with us. I got caught just now. A member of the committee asked me for a short recess. I had assumed, I think correctly, that he wanted a little time to gather his notes and get ready for his next question. I did not mean to say this was the time to have a scrum in the middle of the committee room.

I do not think we want to draw lines on the floor or anything like that, but it would help us a little if members who want to do interviews would step out into the hall, to the back of the room or whatever. We do not want any silly rules or anything like that, but if the purpose of the recess is to give somebody a couple of minutes to gather his notes together, we defeat the purpose of having a recess if it becomes a press conference. Without establishing any rules or lines on the floor, can we all be mindful of that? Thank you ever so much.

Mr. O'Connor: Mr. Chairman, I thank you for acceding to my request. As a result thereof, I think I can shorten my questioning considerably.

Mr. Fontaine, if I may go back to just one point you made, you indicated that in March of this year, when the escrow shares came to your attention, you turned the matter over to your lawyer and did not think about it again, in essence. Can you tell us exactly what it was you told him to do, what your instructions to him were?

M. Fontaine: Lorsque j'ai lu la lettre, je l'ai appelé. Je lui ai dit ... J'ai ici la lettre qui me dit qu'il y a des actions entières. Premièrement, je lui ai dit que je ne me rappelais pas que j'avais ça; deuxièmement, je ne sais pas ce que ça veut dire. Alors, je lui ai dit : on va se rencontrer chez mon père à Hearst. On s'est rencontré là et je lui ai donné les documents. Et de là, je lui ai donné l'ordre de regarder là-dedans voir ce qu'on pourrait faire avec ça. Et moi, personnellement, je figurais, après avoir discuté avec lui le dimanche, on a décidé que peut-être on devrait aller dans le "blind trust" (fiducie sans droit de regard). Il a commencé à faire les coups de téléphone pour savoir quelles étaient les conditions de ces actions mises en mains tierces. C'est lui qui a continué à travailler en ce sens, à faire les recherches, jusqu'à ce qu'il vienne voir M. Blenus Wright.

A un moment donné, il m'a même fait signer un document pour éventuellement transférer cela dans mon "blind trust". Mais cela ne marchait pas; il ne pouvait pas le faire. Alors, lui, il a eu tout cela en mains et il a travaillé jusqu'à la rencontre avec - c'est dans le document ici - M. Blenus Wright. C'est lui qui, encore aujourd'hui, travaille avec M. Pratte sur ce sujet.



Mr. O'Connor: A couple of things. Can you produce for us then the copy of the document you signed authorizing the transfer to the blind trust? Is that available to you and can you get it for us and perhaps also any other documentation or correspondence you had with him about transferring these shares.

M. Fontaine: Je t'ai donné les deux lettres que M. Bourgeault a eues; la correspondance avec la Guaranty Trust. Moi, j'ai communiqué avec lui par téléphone et verbalement.

Mr. O'Connor: You said you signed a document authorizing the transfer. You can get that for us, I think.

Mr. Fontaine: Yes.

Mr. O'Connor: There is one thing, though, that would not require him to be involved, and that is the refileing of a disclosure statement with the Clerk of the House. Why would not you yourself do that or have your secretary here at Queen's Park do that for you, in addition to taking the steps you talked about, immediately upon becoming aware of those shares?

M.

Fontaine: Toutes ces choses-là étaient entre les mains de mon avocat et j'attendais une réponse de lui. J'attendais sa réponse, c'est tout.

Mr. O'Connor: You were expecting him to do a supplemental filing with the Clerk of the House on your behalf?

M.

Fontaine: Eh bien, m'aider. De la même façon que Mary avait fait avec l'autre. J'attendais sa réponse. Personne ne m'a dit de le faire. Ce sont les avocats qui ont ça en mains. Alors, je me fie sur eux.

Mr. O'Connor: No one told you to do it, but you were aware of the disclosure requirements, the guidelines, and that some steps would be taken to make that public.

M.

Fontaine: Je t'ai dit tout à l'heure que mon avocat avait ça en mains et c'est lui qui s'en occupait.

Mr. O'Connor: Can we go on to another matter? In your statement this morning, you referred to the one share you hold in the newspaper Le Nord. Correct? You indicated and there is an explanation there that it was a share that was held, in fact, by United Sawmill and that, therefore, there was no technical reason it should be revealed as an asset of yours in your disclosure statement. I do not know exactly where you said that, but I think that is the substance of what you said. It is paragraph 55, I believe.

Is that correct? You refer to the disclosure statement, and I am looking at that where you disclosed that the one share in Le Nord is registered in your name.

Mr. Fontaine: Not my name.

Mr. O'Connor: If you look at your statement--

Mr. Fontaine: C'est marqué Fontaine Lumber. Ils parlent de Fontaine Lumber. ...When I was interviewed, they found that Fontaine Lumber and Le Nord were, in fact, owned by United Sawmill as a result of the 1982 amalgamation of Fontaine Lumber--you are talking about paragraph 55?

Mr. O'Connor: Yes.

3:20 p.m.

Mr. Fontaine: Quand j'ai parlé avec Mary Eberts à l'été 1985, au mois de juin, je croyais que lorsqu'elle m'a lu vitelement les titres où on parlait dans les journaux, alors j'ai dit que j'ai mis le Nord dans ça, comme dans le document que tu as ici. Plus tard, mon avocat a découvert que la part du Nord appartenait à United Sawmill, puis ma part de United Sawmill est dans un "blind trust". A ce moment-là, tout ce que tu veux savoir est écrit ici, dans le paragraphe 55.

Mr. O'Connor: I understand now the explanation. I was not sure, because the form you produced indicated the share was in your name alone. It was subsequent to doing that form you discovered it was a United Sawmill asset and therefore did not disclose it later on.

Mr. Fontaine: Yes.

Mr. O'Connor: There is just one last point. I am sorry to jump around in this fashion, but going back to the shareholdings in Golden Tiger, I am wondering whether you are aware that the Golden Tiger shareholder records do not indicate that your wife is a shareholder or that she ever has been a shareholder of that company, at least up to the time of the searches we did, which I think were about a month ago, June 24, 1986. Were you aware of that, and have you any explanation for that?

Mr. Fontaine: No.

Mr. O'Connor: Either the 3,000 shares or the 10,000 shares. She is just not shown. Is there any reason for that?

Mr. Fontaine: I do not know. Je ne sais pas .

Mr. O'Connor: Does she have a share certificate for her shares, either the 3,000 or the 10,000?

Mr. Fontaine: Elles sont vendues.

Mr. Pratte: Sir, we have a copy of the 10,000-share certificate in her name. Again, I do not have it here, but I will produce it for the committee as soon as I can.

Mr. O'Connor: I do not doubt it. I just wonder if there is some explanation of why the company does not show her as a shareholder.

Mr. Pratte: Mr. Fontaine has said no. Frankly, I did not know that, but there is a certificate. If you want it, I will give you a copy of it.

Mr. O'Connor: Those are my questions for the time being.

Mr. Laughren: I have a very brief question. Mr. Fontaine, in view of some of the statements that were made in the committee yesterday, I wondered why there is no reference whatsoever in your statement to the forest management agreement issue, why you have not dealt with that in your statement at all. Do you understand the question?



Mr. Fontaine: Moi je croyais que... this issue was raised in January, and since then the cabinet or the government has put a committee to study that. That is it.

This morning I talked about the FMA, the history and all this, and I do not see any conflict in this.

Mr. Laughren: I was reading earlier the piece in the paper. This particular one came out of the Toronto Sun. It is a question about the FMA, and you were recorded as saying that the Hearst FMA was never an issue, and then I think you claimed that the Premier (Mr. Peterson) pulled discussion of the FMA from cabinet deliberations.

Mr. Fontaine: I do not think it is in the Sun.

I meant the chairman of the committee of cabinet decides if the thing goes or not. I do not have to have a bachelor of arts degree to know what is happening in the committee, who decides whether a thing is going to go through or not. Our people at Hearst were waiting for this. They knew in the afternoon. When you are waiting for something and it does not happen, you know the reason. Everybody knows about these things, whether they are going to this place or that. I said that in that context.

Mr. Laughren: The only reason I am pursuing this issue is the specific quote, which states, "Fontaine told the Kapuskasing-based Northern Times Peterson pulled consideration of the Hearst-area FMA because of opposition charges he and his family would benefit from the deal."

Mr. Fontaine: I am not here to judge what the newspaper writes.

Mr. Laughren: All I was asking was whether there was a particular reason Mr. Fontaine did not deal with the FMA question in any way in his very broadly based and specific statement of this morning. That is the reason I asked the question. Is it because you feel it is totally out of the question, that the committee established by the Premier looks after that and, therefore, it is of no concern to the committee, or is it because you feel it is not an issue in any way in your own mind?

M. Fontaine: Pour moi, <sup>ce n'est pas</sup> bien bien sûr dans ma tête . En plus, il y a un comité qui va étudier l'affaire pour voir s'il y a eu des influences ou non. C'est comme ça que je le comprends.

Mr. Mancini: I have just one question of Mr. Fontaine. I have seen in your statement that you admit there have been a number of instances where small interests were not disclosed in a timely fashion. If I understand your lengthy statement to us correctly, however, you do accept full responsibility for these omissions ?

certainement.

M. Fontaine: Bien, j'accepte, Parce que si tu embauches du monde ou bien que tu donnes ou que tu délègues tes affaires à quelqu'un, et que ça ne se fait pas , j'ai une responsabilité de pas avoir suivi les choses . La réponse est oui.

Mr. Treleaven: Supplementary to Mr. O'Connor's question, did Golden Tiger receive any grants from the Ontario government since June 16, 1985?

Mr. Fontaine: I do not know. Maybe.

Mr. Pratte: You are looking at me, sir. Should I answer that?

Mr. Fontaine: He said it is all in the letter from the ministry you are going to get.

Mr. Treleaven: Again, following Mr. O'Connor's discussions with you, I would like to refer to meetings and discussions you have had with various people, if any. I will use three people--Ms. Eberts, the Premier and the Attorney General (Mr. Scott). Have you had any meetings or discussions with them or their staffs regarding conflict-of-interest matters over the last year?

Mr. Fontaine: What do you mean by that?

Mr. Treleaven: Just really meetings or discussions with any or all of those people or their staffs regarding conflict-of-interest matters?

Mr. Fontaine: Matters or guidelines?

3:30 p.m.

Mr. Treleaven: Conflict-of-interest matters in general.

Mr. Fontaine: Do you mean last July when we worked on the documents?

Mr. Treleaven: Yes, that is right. Since the documents came up, since June 26, 1985.

Mr. Fontaine: Directly with the Premier, in January, when Mr. Runciman discussed the FMA, that was discussed there, but--

Mr. Treleaven: Did you speak to all three of them or their staffs about this matter, that is, Ms. Eberts, the Premier, the Attorney General, their officers, their solicitors, their staffs or their assistants regarding any of these conflict-of-interest matters?

Mr. Fontaine: Nothing, I do not think so. The lawyer and my accountant phoned Mary about --- I did not talk to her for a long time. It was done between my lawyer and André Gagné. I talked with the Attorney General when the last allegation arrived on a Tuesday. At that time, I talked to him.

Mr. Treleaven: You say on a Tuesday.

Mr. Fontaine: I do not know the date.

Mr. Treleaven: It was on a Tuesday when the last allegation came and you talked to the Attorney General.

Mr. Fontaine: It was a Tuesday.

Mr. Treleaven: When you say Tuesday, when are we speaking of?

Mr. Fontaine: Two weeks ago.

Mr. Treleaven: July 1986?

Mr. Fontaine: You were there in the House. You must know. I was not there. What is the date? I do not know. You must know; you were there.



Mr. Treleaven: No, I certainly was not at any meeting with you and the Attorney General.

Mr. Fontaine: No. It is when Mr. Brandt brought it to the House. What is the date of this? That is the date.

Mr. Treleaven: You are saying when Mr. Brandt made the first disclosure in the Legislature.

Mr. Fontaine: That was a Tuesday. Am I right or wrong?

Mr. Treleaven: I am sorry, I cannot tell you whether it was a Tuesday. You had a meeting that day with the Attorney General?

Mr. Fontaine: No, that night, after.

Mr. Treleaven: Who else was at that meeting?

Mr. Fontaine: I met him and that is it.

Mr. Treleaven: Who else was at that meeting? Was it just the Attorney General and yourself?

Mr. Fontaine: What is he driving at? I do not know what he wants.

Mr. Chairman: I must admit, Mr. Treleaven, I am having a little problem. I think there is a little language difficulty. As I have heard it so far, you have asked whether he talked to any of those three people or their staffs at any time, virtually in the past year.

Mr. Treleaven: About conflict-of-interest matters; that is right.

Mr. Chairman: I do not mind a general fishing rod question here and there, but that is a little much for me. Do you have something more specific? Are you asking him whether he had meetings with them?

Mr. Treleaven: Meetings or discussions; that is what my question was.

Mr. Fontaine: The meeting I had with the people is all here.

Mr. Chairman: I will tell you what my problem is. If you asked me whether I had a conversation in the past year with three people about anything, I could not tell you. If you asked me whether I sat down and had a meeting about a particular item and who was in attendance at the meeting, I probably could recall that.

Mr. Treleaven: Mr. Chairman, you are giving me some kind of answer. I am not getting any from Mr. Fontaine.

Mr. Chairman: I think it is because Mr. Fontaine does not understand your question and I am trying to assist. Is your question, was there a meeting where this matter was discussed, or is your question, if at any time you talked about conflict of interest with any of those three people? Try again.

Mr. Treleaven: Is it fair to say you had a meeting with Ms. Eberts in June, 1985 immediately after--

Mr. Fontaine: It is here.

Mr. Treleaven: Yes. Who else was at that meeting?

Mr. Fontaine: It is marked over here in a statement.

Mr. Treleaven: Did you have any other meetings with her regarding conflict-of-interest matters?

Mr. Fontaine: I met with Mary when they were working on my blind trust. That was before Christmas. She made me sign a blind trust on the 23rd. Before December 23 I met her once on the blind trust.

Mr. Treleaven: You only had the one meeting with the Attorney General?

Mr. Fontaine: The Attorney General was to help me to get some lawyers to work for me.

Mr. Treleaven: Did you have any meeting with the Attorney General's staff right up to today.

Mr. Fontaine: It is not happening with that year.

Mr. Chairman: That is a pretty specific question as I heard it, so I will try to help here. The member asked you if you had met with staff of the Attorney General's office in preparation for today's meeting.

Mr. Pratte: Mr.--

Mr. Chairman: It does not seem like a tough one.

Mr. Pratte: My problem, sir--

Mr. Chairman: Has Mr. Fontaine met with the Attorney General's staff in preparation for today's meeting or prior to today's meeting?

Mr. Pratte: Sir, honestly, it is not a difficult question, and I am really sorry to interrupt to inject anything, but I guess I have difficulty understanding the relevance of that. After Mr. Fontaine resigned, what steps he might have taken and what he might have talked to lawyers about is my only concern and I do not want to expand on it. He resigned. I understood the purpose of the inquiry was to see what he had done prior to that. I just cannot see the relevance of what legal advice he might have sought from whom after his resignation.

Mr. Chairman: You may see it as being totally irrelevant, but a member of the committee asked the question and he has a right to do that.

Mr. Pratte: I instruct the witness not to answer it, sir.

Mr. Chairman: Now we have a problem.

Mr. Treleaven: The solicitor was talking about Mr. Fontaine seeking legal advice in preparation for today. I was asking about the Attorney General's staff and I do not think the solicitor would interpret that as a solicitor-client privilege. I am asking about people who are on the payroll of



the province of Ontario, not private solicitors, like himself, where there might be solicitor-client privilege claimed.

Mr. Fontaine: No. After my resignation I did not meet anybody after that.

Mr. Treleaven: You have not discussed today's meeting and conflict-of-interest matters with any of the Attorney General's staff or solicitors up to and including today?

Mr. Fontaine: No. I was dealing with them here.

Mr. Treleaven: With regard to the Premier himself or his staff, have you met with any of them or had discussions with them right up to today, regarding these conflict-of-interest matters?

Mr. Fontaine: With the Premier and the staff, we met to discuss my election and everything, and that is it.

Mr. Treleaven: Just about the election, not about conflict-of-interest matters?

Mr. Fontaine: When he knew I was gone.

Mr. Treleaven: I beg your pardon? I am sorry, I did not get the answer.

M. Fontaine: Tout le monde savait que j'avais démissionné. Tout le monde savait les accusations qui ont été portées contre moi. Il n'y a rien de secret dans ça.

Mr. Treleaven: Since the entire world knew about the accusation, and excuse me if my Oxford ear is not picking it all up, then that would be really part of the conversation except the whole world knew about it?

Mr. Fontaine: No, I did not say that. I said everybody knew, and I came over here when I mentioned about my own affairs for my election.

3:40 p.m.

Mr. Treleaven: Is it fair to ask if your lawyer met with the Attorney General's staff about these conflict-of-interest matters?

Mr. Fontaine: Non.

Mr. Pratte: Besides it is not fair.

Mr. Chairman: Let me just assist here a little bit. It certainly would be reasonable for a lawyer representing a client who had been accused of a conflict of interest to meet with staff of various ministries to see who had done what and to gather up information and to gather up what the guidelines were. If that is the definition of them meeting, I do not think anybody would question the legitimacy of that. You would be asking for how was this supposed to happen, what forms were supposed to be filled out? Is there anything more than that in your question?

Mr. Treleaven: I think the answer is no. The answer has been given that there were no meetings between Mr. Fontaine--

Mr. Chairman: Excuse me. Just to clarify it, I did not hear it that way. Mr. Fontaine said no, but I heard his solicitor whisper in his ear it was not a fair question and he was not going to answer it, something like that?

Mr. Pratte: Correct, Mr. Chairman.

Mr. Sterling: Is he denying it, or is he not answering it?

Mr. Chairman: Let me put it this way and we will resolve this problem. Mr. Fontaine is now before the committee. Mr. Fontaine has said that he did not meet with any member of the Attorney General's staff or the staff of the Premier on this matter. We have to accept that. If, on a subsequent date, you wish to call his legal counsel in front of the committee and question him, I would be prepared to entertain that question. At this point, under today's rules, Mr. Fontaine is the witness. You place your question to him. I know we have deviated a little bit from that today, and we have had a little problem with it, but I would appreciate it if you would just leave it there. If you want to pursue it more, we will have the right to call other witnesses, one of which could be his counsel.

Mr. O'Connor: By way of supplementary to Mr. Fontaine, may I ask him a question, Mr. Chairman?

Mr. Chairman: Yes.

Mr. O'Connor: Mr. Fontaine, would you advise yourself as to whether your lawyer met with anyone on the Attorney General's staff and accordingly advise us what his answer is?

Mr. Fontaine: Je ne sais pas.

Mr. O'Connor: The point is, Mr. Chairman, and I think it should get out, Mr. Fontaine is a private citizen. If his lawyer met with the Attorney General's staff for purposes of getting copies of the guidelines, that is fair, but if he or anyone on his behalf met with the Attorney General's staff or lawyers for purposes of getting advice on how to handle himself, for assistance in the drafting of this document, I think there is something wrong with that, in that other private citizens in this province do not have that kind of access to that kind of legal expertise to assist them with this problem.

Mr. Chairman: I am going to ask Mr. Fontaine to respond to that. I am going to give you a fair amount of leeway. I am going to precede this by saying simply that the question is a rather general one. I think they would have to accept a rather general answer. I have not heard anyone make an allegation here, but you are getting very close to the line. If you want to get any closer to that line, you had better have something of substance to back it up. Mr. Fontaine, do you care to reply to that?

Mr. Fontaine: First of all, they are working for me and I do not follow them every day. I was in Hearst and I was not here. When I met in their office, since I am a citizen, what could they say? I am not a citizen that cowers. I am in front of you. There must be something in that. Do you think I am an MPP yet?

I dealt with Guy and Mr. Brown--

Mr. Chairman: As far as you know, they did not have meetings of an extraordinary nature with the Attorney General's office.



Mr. Fontaine: I do not know.

Mr. Chairman: No.

Mr. Martel: What bothers me, unless I am hearing things, is that I think I heard the solicitor say he was not prepared to answer the question that was posed. You are quite right in ruling that he is not the witness, but I want to tell you that just puts my old head in gear when somebody says, "I am not prepared to answer that." Where there is a little smoke, there is fire.

When he says "I am not prepared to answer," my old antenna just goes up right away and I say: "Wait a minute, there is something there. Has he met with somebody? Has he talked to someone?" Because he would have said no. Maybe I am out to lunch, but, boy, I get suspicious. I am from Missouri when I hear an answer like that come forward. Maybe you can help me, but I am telling you, when he said no, he is not prepared to answer that when it was either a yes or no answer, something is crazy.

Mr. Pratte: What is there is what is called solicitor-client privilege. It is a very delicate question. I think we have tried to be forthright. I would like some time.

Mr. Chairman: Let us put it this way. We have asked Mr. Fontaine, who is today's witness, if he is aware of any meetings of an extraordinary nature with the Attorney General's office. He has replied, as I recall it, no, he is not aware. I think we would have to accept the witness's answer on that particular matter.

If you want to pursue it any further with the counsel for Mr. Fontaine, you will have the right to call him as a witness and pursue that line of questioning. To be quite blunt about it, I think I would feel much more comfortable about that if anyone was able to produce any kind of documentation or provide us with some reason for calling him, antenna notwithstanding. I know exactly what you mean. Before we would do that, I think that is what Ms. Hart referred to previously as being an allegation.

Mr. Martel: Maybe you can help me one step further then. While it is solicitor-client relationship, between him and Mr. Fontaine. That does not pertain between him and the Attorney General and somebody from the Premier's office. I am not a lawyer, but maybe somebody can bail me out on that one. If it is between him and Mr. Fontaine, that is one thing, but the question was not asked about between him and Mr. Fontaine. It was asked whether representation was made to prepare for today's meeting with somebody in the office of the Attorney General or the Premier. Antenna not involved, something bothers me about the response the solicitor made, maybe inadvertently, but he put his foot into something I would like to know the answer.

Mr. Chairman: I am going to accept that as a comment. It is getting near the end of the afternoon. We have a witness before us and we were going to attempt to conclude today with questioning this witness. I want to give an opportunity to other members of the committee who may have questions of the witness to put them before we get into arguments. Are there any other questions of Mr. Fontaine?

Mr. Treleaven: Those were just preliminary. I have a series of questions that will take some time, so if you want to address your mind to that, Mr. Chairman, I am going to take a fair length of time going into the corporate matters.

Mr. Chairman: Are you suggesting this would be an appropriate time for us to consider whether we will sit this evening, recall Mr. Fontaine tomorrow and that kind of stuff?

Mr. Treleaven: Maybe, since you brought it up about trying to get through with Mr. Fontaine today. It will take me some little time on the dull stuff, the dull, legal, corporate stuff, but it will be a little lengthy. Perhaps it is the time.

Mr. Mancini: You are not going to filibuster all night again, are you?

Mr. Treleaven: No. I am like a bat; I get going at midnight.

Mr. Chairman: Let us interrupt the proceedings here for a moment and entertain some discussion about that. Mr. Treleaven is suggesting we should make preparations to sit this evening. I want to point out that there are some mechanical problems about sitting this evening, about giving notice to staff, to the translation units and all that.

Mr. Martel: Maybe we can ask the witness if he can come back tomorrow.

Mr. Chairman: Would that be a preferable way to proceed?

Mr. Mancini: It is 3:50 p.m. Usually, we have been breaking around 4:30 p.m. I do not know how lengthy Mr. Treleaven's questions are going to be. I do not know how lengthy Mr. Fontaine's answers are going to be. Surely we could stay till at least five and we might be done, or maybe till six o'clock and we might be done. I do not know why we should dismiss out of hand the possibility of sitting tonight.

Interjection.

Mr. Chairman: Let Mr. Mancini finish. Go ahead.

Mr. Mancini: I just think it is something we should consider. Mr. Treleaven has stated he has a lot of questions to ask about the corporate business dealings. Mr. Fontaine answered many questions this morning from Mr. O'Connor, who had the floor for well over an hour this afternoon, about many of his corporate dealings. We do not even know yet if the questions are going to be repetitive. If they are, I am assuming you are going to cut them off, as per the instructions you gave us early in the week. I think it is too early for us right now to make a decision that we are going to pack up the shop and keep Mr. Fontaine overnight. I think we should give some thoughtful consideration to sitting later than we usually do in the afternoon and also this evening.

Mr. Chairman: Are there any other comments on it?

Mr. Fontaine: I do not mind coming back tomorrow morning.

Mr. Chairman: Okay, fine.

Mr. O'Connor: By way of general comment, having been involved in the organization of our approach to this, I can advise you that I think there will be at least another day of questioning by the two remaining members of our caucus, perhaps with supplementaries from some others of us. There is another reason we should consider not going hard right now and carrying on tonight,



and that is that a number of undertakings have been given to produce documents. Perhaps the witness should have the opportunity to gather them together and get them to us. For several reasons, we should not charge ahead. We should take our time on all this.

Mr. Martel: There is another concern. While we all sit here waiting our turns to speak, Mr. Fontaine has been at it now for the better part of four hours. It is fine for us to say that we can sit much longer, but it is Mr. Fontaine who has been answering a lot of questions. In consideration of the fact that he has been under the griddle all day--

Mr. Mancini: If he gets tired, he will tell us.

Mr. Martel: It is different when you are raising issues than when you are sitting answering them one after another. We are not in an endurance test, particularly for the witness. If they are going to ask questions for a day and a half yet, in fairness to the witness I do not think we should ask him to sit here for eight or nine hours in a day answering questions.

Mr. Fontaine: I remind you that I have an election too.

Mr. Chairman: One of those.

Mr. Fontaine: I am ready to stay here tomorrow, but I have to go back home for Friday.

Mr. Chairman: Thank you for your co-operation.

Mr. Fontaine: I think the last plane for the north is tomorrow at eight o'clock.

Ms. Hart: First, in answer to Mr. Martel's concern, perhaps we should ask Mr. Fontaine whether he is able to continue now and to sit tonight. Second, with respect to the undertakings, except for one that may come from Montreal, they probably could be done over the dinner break.

Mr. Chairman: Are they all here?

Mr. Pratte: They are all here except for one.

Mr. Chairman: Except for one.

Mr. Pratte: I think if we are going to go for another day, we are prepared to recess now.

Mr. Chairman: At this point in the committee's hearings, I am going to yield to the witness. If it is his preference to break now and come back tomorrow, I will yield to that. It seems to me that at this stage in the process we have invited people to appear. He has to make some arrangements if he is to be here tomorrow and it may take a little time to do that. Is it the wish of the committee to terminate the hearing now this afternoon and to begin again tomorrow at 10 a.m.?

Agreed to.

Mr. Chairman: We will break now. If you have any documents that you want to table with the committee, will you do so now so that we can do the circulation before we go?

The committee adjourned at 3:54 p.m.

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REVISED

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

THURSDAY, JULY 24, 1986

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Johnson, J. M. (Wellington-Dufferin-Peel PC)

Laughren, F. (Nickel Belt NDP)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Johnson

Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Turner

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

Fontaine, R.

Pratte, G., Counsel to Mr. Fontaine; with Blake, Cassels and Graydon

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, July 24, 1986

The committee met at 10:09 a.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST  
(continued)

Mr. Chairman: I think we are about ready to proceed this morning. Just before we begin, I remind the witness that he is still testifying before the committee under oath, as he took the oath yesterday. Mr. Treleaven is about to begin his questioning.

You may have noticed yesterday afternoon that I was quite prepared to give considerable latitude to the questioning. It was our first opportunity to question a witness, and I will not put any restrictions on the questioning except to say that I would like to be able to say at the end of the day that any members who had questions have had the opportunity to ask them. I am simply asking you to put your questions succinctly and clearly and to avoid any what you might laughingly call supplementaries. In other words, get your questions on the record and get your answers, and if other members then want to ask questions, fine, we will proceed that way.

Mr. Treleaven: Mr. Fontaine, just before we broke last night, the chairman, through the clerk, handed out three documents--I will call them that--one of which was a copy of a letter. For the sake of the record, if I can refer to it, it is on the letterhead of the Ministry of Northern Development and Mines, dated July 4, 1986, marked "Private and confidential." It is to D. J. M. Brown, QC, Blakes--I believe that is Blake, Cassels; I will ask you in a minute--Box 25, Commerce Court West in Toronto. It is regarding the Ontario mineral exploration program, and it is signed by S. J. Stepinac, counsel, legal services of the ministry, with a copy to the deputy minister, George Tough.

You are familiar with that letter?

Mr. Fontaine: I saw it with you last night.

Mr. Treleaven: You saw it last night. All right. It refers to the first letter. It says, "This is further to our telephone conversation of June 27, 1986." This would be a telephone conversation, obviously, between Mr. Brown and Mr. Stepinac.

To paraphrase the first page and a quarter, down to where it starts "designations," the first page and the first two paragraphs on the second page, would it be fair to paraphrase that by saying that it sets out that under the Ontario mineral exploration program, while the minister has the authority and the power to make grants and give approvals, it is not normally done? It is normally done by people under him, bureaucrats in his ministry, the administrator and occasionally the director. Is that a fair way to paraphrase that?

Mr. Fontaine: Not in my mind. I still say that the minister--it is the director of this program who has the authority to do everything.



Mr. Treleaven: Yes, he is the authority, but in section 2 of the act, does not the minister also have the authority, as the minister above all of those people?

Mr. Fontaine: I was told by the counsel that I had no authority. The authority relies on this man alone and the minister has nothing to do with it.

Mr. Treleaven: By "the counsel" you mean Mr. Stepinac?

Mr. Fontaine: No, no, by--let me consult here.

Mr. Treleaven: You say when you were sworn--

Mr. Fontaine: Which paragraph are you talking about?

Mr. Treleaven: In particular, the fourth paragraph on the first page. It says, "Designation of a program can be made by the minister (section 2 of the act)," and it goes on, "or by persons" and so on. I am simply trying to get a paraphrase that the minister has the authority but normally does not do it. It is as simple as that.

Mr. Mancini: Excuse me, I do not think it is fair to have Mr. Treleaven ask Mr. Fontaine to paraphrase things. I think we should be dealing specifically--

Interjection.

Mr. Chairman: Let me put it this way for all members of the committee. There is no question that any minister of the crown has in a technical, legal sense powers which he does not exercise and that along with that comes the responsibility. The minister may not do it, may never see the pieces of paper, but the minister is, in traditional parliamentary terms, responsible for that, whether he does it or not. That is a given.

Mr. Treleaven: Thank you. Let us go on. In the second paragraph of the second page, it talks about the three OMEP files relating to Golden Tiger Mining Exploration Co. Inc. Then it talks about the three designations, or call them grants or tax credits to these companies, whichever you are aware of.

The first one talks about a grant for which the final approval was given on June 24, 1985. The list of officers and directors includes you. Is that correct? Do you disagree with that?

Mr. Fontaine: I resigned from the directorship and--

Mr. Treleaven: June 24, 1985 would be a month and a half after you were elected as a member and two days before you were sworn in as minister. I am trying to find out whether you disagree with any of this. The list of officers and directors included you on that first grant.

Mr. Fontaine: You have to refer Sir -- que cette demande a été faite le 09 juillet 1984. I think he can read too. If you go back to this application for the exploration program in the Thunder Bay mining division, dated July 3, 1984, at that time I was a director, for sure.

Mr. Treleaven: There is no problem. When the application was made, this was well before your election. When the final approval was given, you had been elected.

Mr. Fontaine: Yes, but I was not the minister.

Mr. Treleaven: That is right.

Mr. Fontaine: Then I resigned at the same time. You got that letter in your file yesterday.

Mr. Treleaven: Fine. Let us go on to the second designation.

At that point, the period of designation from December to September 30, 1985--now we are into a different period of time. The final approval there was given in June 1986. This was being dealt with throughout 1985 and 1986, and this notation, you will notice the second paragraph on page 3 talks about a list of officers and directors in the files showing your name with a notation beside it, "Resigned to become mines minister." Do you agree with that? Are there any problems with that?

Mr. Fontaine: I did not see the application. If it is there, it is there, but I did not see it.

Mr. Treleaven: The last one, which is a continuation of the second one, is one for which the final grant was approved on March 13, 1986. When it talks about the list of officers and directors, again, it has this notation, "Resigned to become mines minister." That is the large one, a \$187,000 grant. Actually in this case, I guess it is a tax credit. Is that correct?

Mr. Fontaine: I do not know.

Mr. Treleaven: Do you know whether these are tax credits or grants, these three?

Mr. Fontaine: No. I do not know.

Mr. Treleaven: Correct me if I am wrong. It is my understanding that if a company in Ontario has no taxable income, it gets a grant, but if it has taxable income against which to set off tax credits, it gets tax credits. Is that correct?

Mr. Fontaine: I do not know. Tu devrais voir qu'ils ne l'ont pas reçue encore. C'est seulement une demande. It is an approval and it did not receive any money yet. It is an approval, they say here. You have to go back to see when this application was made. Quand elle a été faite cette demande. Maybe it was in 1984 and it is paid in 1985. Je pense qu'il faut que tu regardes la demande et que tu regardes à quel moment. Même s'ils ont été acceptés pour un projet, des subsides, ça ne veut pas dire qu'ils ont reçu l'argent.

Mr. Treleaven: Fine. That is correct.

Mr. Fontaine: Il faut être juste. Je te dis qu'il faut que tu regardes à quelle date la demande a été faite. There are three stages in this thing.

Mr. Treleaven: Thank you. That is correct. There are stages--correct me if I am wrong--in which in each of the three applications you were either a minister or a member and certainly a shareholder, through blind trust, escrow or otherwise; you and members of your family were shareholders while these applications were being made at some point in the proceedings of each of these three applications. Is that correct?



Mr. Fontaine: When the application was made, did you say?

Mr. Treleaven: Let us restrict that question. You were an MPP on all approval dates of all three applications. Is that correct?

Mr. Fontaine: It looks like it; yes.

10:20 a.m.

Mr. Treleaven: You were a minister at the time of two of them. Are you familiar with sections 10 and 11 of the Legislative Assembly Act?

Mr. Fontaine: Yes.

Mr. Treleaven: I am not trying to lead here, Mr. Chairman, before you jump me.

Did it occur to you that there was some question of propriety, as an MPP or as a minister and as a director or a past director of a company and certainly a shareholder indirectly or directly obtaining a benefit, that there might be some questionable propriety about receiving these moneys; that you should have stayed in in some capacity and that you should not have somehow backed off when the alarm has gone off and the red flag has gone up, and said, "Oops, is there some potential impropriety, embarrassment or question"?

Mr. Mancini: I just want to make one point, with Mr. Treleaven's permission--

Mr. Fontaine: I will answer this question.

Mr. Mancini: I just want to make one point. I have some difficulty when Mr. Treleaven refers to the standing orders and to Mr. Fontaine's status when he was an ordinary MPP. I think we are here to get information as to when he was a minister, because we have not really, as a committee, looked at what we wish to do with conflict of interest with regard to an ordinary MPP. We are here to talk about Mr. Fontaine's actions when he was a minister. In broadening the scale as to when he was a member, I do not know in what direction we are going or why we wish--

Mr. Chairman: Let me stop you there. You may recall that on the first day we had some discussion about terms of reference for the committee and, although I did not make any ruling on it at that time, I indicated that at least for starters there were two or three things that would form a rough frame of reference for us. One was the motion that was directed to us by the assembly, one would be the Legislative Assembly Act and one would be the Executive Council Act.

I hesitate to let this develop much further, but it does seem to me the committee agreed that the Legislative Assembly Act was related to this matter. While I am not going to hear a lot of questioning on this, I hope, we did agree to that, and it seems to me we are well within that frame of reference.

Mr. Treleaven: That is my final question on this area. If Mr. Fontaine wishes to answer that, I would have no further questions on this.

Mr. Fontaine: First, Golden Tiger applied for and received some grants prior to my becoming a minister.

Second, I never had any involvement on behalf of Golden Tiger either before or after I became a minister. I refer you to page 2 of Mr. Stepinac's letter, where he says, "All applications and approvals were carried out in a normal way; there was no involvement by Mr. Fontaine."

The Ontario mineral exploration program is a program provided for by law. It is not discretionary. All companies that satisfy the legal requirements get grants. I am told that for 1985-86, some 250 applications were received for a total of \$24 million. Grants of \$12.1 million were approved.

It is true, therefore, not only that I had no personal involvement, but also that Golden Tiger received no preferential treatment. I never kept this hidden, like my share in Golden Tiger. The fact it received government grants was disclosed in my July 1985 disclosure. The guidelines make an exception in case of benefits that are provided for by legislation or by regulation which, by the terms of the legislation, are available to all members of the public, such as the Ontario health insurance plan, or to a specific class of members of the public, such as crop insurance. OMEP is clearly in that class. Clearly, therefore, there was not even an appearance of conflict to what the guidelines permitted.

Mr. Treleaven: I am a bit puzzled by one thing here. You mentioned yesterday that Golden Tiger had most of its business in Quebec; 90 per cent I think you said, and only 10 per cent in Ontario. It is my understanding that this 10 per cent must have amounted to a fair amount, because the last two grants, which amount to about \$211,000 were tax credits. Can you help me out? They were tax credits. Therefore, there had to be taxable income in Ontario to set these tax credits off again; otherwise, they would have been grants in lieu thereof. Can you help me with that?

M. Fontaine: Premièrement, je te le redis, je ne sais pas si ce sont des crédits d'impôt ou des subventions. C'est Monsieur Martin qui nous a dit qu'il y avait 10 pour cent de dépensé en Ontario. Il faut que tu retournes en arrière. Il y a des demandes qui remontent à 1984 et peut-être à 1983. Il y a toujours un espace de temps entre la demande et lorsque le directeur des opérations d'OMEP prend une décision. Tout le monde sait ça.

Deuxièmement, pour comprendre ce que tu me dis-là, il va falloir que tu regardes toutes les compagnies qui ont dépensé dans le bout de Klotz lake mais moi, je ne les ai pas suivies.

Comme je vous l'ai dit hier et je l'ai dit à M. O'Connor, Getty a acheté des terrains de Golden Tiger il y a trois ou quatre ans, trois ans je crois et lui, il peut avoir dépensé cet argent-là. Mais je peux vous dire que lorsque j'étais dans la compagnie Golden Tiger, il n'y a jamais eu cet argent-là dont tu parles, des \$700,000.

Dans les compagnies minières, pour ceux qui connaissent ça, moi je n'y connais pas grand chose, mais ceux qui travaillent dans les mines, \$100,000 ou \$150,000 lorsque tu fais du forrage, ce ne sont pas des mois et des mois de forrage. C'est peut-être trois semaines, un mois ou un mois et demi. Lorsque que tu fais de l'exploration dans les mines, \$150,000, il paraît que ce n'est pas grand chose.

Mr. Treleaven: You mentioned the Getty company. There is a listing in the Financial Post showing Getty under joint venture with Golden Tiger. Did Getty get any grants?



Mr. Fontaine: I do not know.

Mr. Treleaven: Can you provide us with that information? Can you get that from someone?

Mr. Chairman: Just to intervene here, I want to point out that Mr. Fontaine is no longer the minister, and so I would say that it is a bit unfair to ask a private citizen to provide that kind of information. We have a research capacity within the committee. Let us try to get it that way if you want it.

Mr. Treleaven: I will withdraw that.

May I get back to this letter for a moment? This is to D. J. M. Brown, QC. Is it fair to say that is Don Brown, a solicitor, one of the senior counsel in Blake, Cassels and Graydon in Toronto?

Mr. Fontaine: Yes.

Mr. Treleaven: Is that the same firm that is carrying out a special outside review of all ministers' economic holdings for the Premier?

Mr. Fontaine: I do not know.

Mr. Treleaven: Are you aware of a special outside review now being carried on by the Premier?

Mr. Fontaine: No.

Mr. Treleaven: So there could be two Toronto law firms named Blake, Cassels?

Mr. Fontaine: I do not know.

Mr. Treleaven: Was this letter to D. J. M. Brown, QC, Don Brown, sent to him? This is from Stepinac, counsel, legal services of the Ministry of Northern Development and Mines, It says at the beginning, "This is further to our telephone conversation of June 27, 1986."

Was Mr. Brown calling and discussing with Mr. Stepinac by telephone and receiving this letter in the capacity as your lawyer or the Premier's lawyer?

Mr. Fontaine: Is that June 27 you are talking about?

Mr. Treleaven: Yes, June 27.

10:30 a.m.

Mr. Fontaine: I hired them on June 26 at night.

Mr. Pratte: June 24.

Mr. Fontaine: June 24.

Mr. Pratte: We were acting for Mr. Fontaine on that date.

Mr. Fontaine: That is Tuesday.

Mr. Treleaven: This letter and the telephone conversation was as your lawyer and only as your lawyer.

Mr. Fontaine: Yes.

Mr. Treleaven: Have you put in a retainer to this firm? Since Mr. Fontaine does not know about this review, I will leave that line of questioning unless somebody else has a--

Mr. Chairman: That would be a merciful thing to do.

Mr. Treleaven: Fine. When we left off last night, we really did not have any particular answers about the people you had been discussing or meeting with over this conflict-of-interest matter. If we could just clarify it, we found out that since becoming a minister, you held discussions or meetings with Mary Eberts and with the Attorney General (Mr. Scott). I think that was established. Am I correct?

Mr. Chairman: I am going to do something unusual. I am going to ask you to repeat the question. I did not understand it. Would you just repeat that question?

Mr. Treleaven: Since becoming a minister, did Mr. Fontaine hold meetings or discussions with Mary Eberts and the Attorney General, with those two people?

Mr. Chairman: My problem with that line of questioning is that you are asking someone whether, since he became a minister more than a year ago, he ever talked to these two people.

Mr. Treleaven: Regarding the conflict-of-interest matters. That was part of my question.

Mr. Chairman: If you could try to make your questions a little more specific, you would help us. Obviously, he talked to Ms. Eberts; that is part of his statement. Obviously, the cabinet discussed conflict of interest; that also is in his statement. I think you want something a little more specific.

Mr. Treleaven: I know. I am trying to give one question and then get specific. Otherwise, I just get into a litany. Did you talk with A? Did you talk with B? Did you talk with C? I would like to start out by asking did you talk with anyone? Then isolate them 1, 2, 3 and say, okay, that is it and then we go from there.

Mr. Chairman: But you are trolling in a small lake with a big net here. Get a little more specific for me, will you?

Mr. Treleaven: Okay. I would like confirmation or otherwise, Mr. Fontaine, that you did meet and discuss conflict-of-interest matters with Mary Eberts and with Ian Scott.

Mr. Fontaine: Before my resignation. Avant ma démission ou après?

Mr. Treleaven: After you became minister.

Mr. Fontaine: Before I resigned ou après que j'ai eu démissionné?

Mr. Treleaven: After you became minister.



Mr. Fontaine: First, if you look at my statement, Mary Eberts, elle travaillait pour moi. I talked about Mary Eberts at the beginning of that statement. That is there. It is in that statement over here.

Deuxièmement, le 24 juin, vers 6 heures, j'ai rencontré M. Scott au sujet de ce qui s'était passé dans la Chambre au cours de l'après-midi et il m'a référé à M. Brown. M. Scott m'a appelé après ma nomination dans mon comté, mardi passé, pour me féliciter, and that is it.

Mercredi il y a deux semaines ou trois semaines, the week after that, j'ai rencontré le premier ministre avec ma femme parce que nous étions très découragés. Je suis venu ici et j'ai discuté de mon cas, de mon élection, et il nous a encouragé à continuer. Hier, j'ai eu ma photo prise avec lui, le premier ministre. Une photo pour mettre dans mon dépliant que je vais utiliser pendant mon élection. C'est tout.

Mr. Treleaven: So that was the only time you met with Mr. Scott on this matter?

Mr. Fontaine: Yes.

Mr. Treleaven: Have you met with people from his ministry, his staff, on this matter, Blenus Wright in particular?

Mr. Fontaine: No.

Mr. Treleaven: Anybody on Blenus Wright's staff?

Mr. Fontaine: I do not know those staff. I am not God. Blenus Wright--I do not even know who he is.

Mr. Treleaven: Mary Eberts? Anybody else? Any associate solicitor with her or anyone on her staff regarding this?

Mr. Fontaine: No.

Mr. Treleaven: Did you discuss this with the Premier?

Mr. Fontaine: Je t'ai dit non avant. I told you no before.

Mr. Treleaven: Nor anyone on his staff?

Mr. Fontaine: No.

Mr. Treleaven: I guess what we are down to--and I ask you just to wrap this up, Mr. Fontaine--is that you met with Mary Eberts and the Attorney General on one occasion, and that is it.

Mr. Fontaine: Non, non, non. J'ai dit dans ma déclaration que j'ai parlé avec Mary Eberts. I talked to Mary Eberts more than once.

Mr. Treleaven: We know, but Ian Scott once and Mary Eberts several times. Those are the only people you discussed the conflict-of-interest guidelines with?

Mr. Fontaine: This thing over here?

Mr. Treleaven: That is correct.

Mr. Fontaine: The conflict-of-interest guidelines, what was coming before, from June 1985 with Mary Eberts. I did not see Mary Eberts after Christmas.

Mr. Treleaven: Fine.

Mr. Sterling: Could I ask something on that same line of questioning?

Mr. Treleaven: Yes. I am through with this line of questioning.

Mr. Sterling: Yesterday you said you met with Ms. Eberts--

M. Fontaine: Non. Je n'ai pas dit ça. J'ai dit que j'ai parlé de Mary Mary Eberts in the statement over here.

Mr. Sterling: But yesterday you were questioned as to how many times you met with Ms. Eberts. You said you met with her twice, in June and in December.

Mr. Fontaine: December?

Mr. Sterling: Yes.

Mr. Fontaine: For the trust, for business, yes.

Mr. Sterling: You met with her twice?

Mr. Fontaine: Yes.

Mr. Sterling: Did she advise you at any time, either in June or December, that you should dispose of your shares in Golden Tiger?

Mr. Fontaine: Read the statement. Lis le document, c'est dedans.

Mr. Sterling: Why did you not sell your shares in June?

Mr. Fontaine: You did not read the statement. Read the statement. It is all in there. If you refer to the statement, she discussed with my accountant, André Gagné, in late November and then right away André Gagné phoned me--it is in the statement--to sell my shares. They did not want to put them in a blind trust. It was not until November that through André Gagné this thing arrived: "Sell you shares. We are not putting them in a blind trust." It is right in the statement over here.

Mr. Sterling: In June you revealed to Mary Eberts that you had shares in Golden Tiger and you were then appointed as the Minister of Northern Affairs and Mines. She did not advise you to sell the shares at that time?

Mr. Fontaine: No. My statement says:

"Towards the end of November, Mr. Gagné received a telephone call from Ms. Eberts advising that I should sell my shares in Golden Tiger. Until then, I had not dealt with any of my assets as Mr. Gagné had suggested that I 'stay away from them' until a decision had been made on which of them should be sold and which should be put in the blind trust.

"It was solely as a result of this advice, which I accepted, that I gave the instructions to sell the shares belonging to me and to my wife, which I detailed in the House."



Mr. Sterling: The reason I ask that question is that when Ms. Caplan was advised by Ms. Eberts, she was advised that her husband should sever all relationships with the government forthwith. I am wondering why she did not advise you of the fact that you might sell your shares in Golden Tiger forthwith when she was talking to you in June. She just did not advise you of that?

Mr. Fontaine: No.

10:40 a.m.

Mr. Sterling: When the problem arose in January and your involvement with Hearst Forest Management Inc. was called into question, and there was a question of conflict of interest in the House on two or three days, did you not seek additional advice at that time regarding that matter and any other personal assets you had? Was there no move on the part of the Premier's office to come to you and say, "Mr. Fontaine, is there anything else we do not know about"?

Mr. Fontaine: When this arrived, as I said in my statement, I went to another lawyer, Mr. Bourgeault, and at that time my shares of Golden Tiger, except the ones in escrow, were all sold. We were working on the conflict of interest of the forest management agreement. The blind trust was in place. I signed a statement on December 23 and it was filed before the end of the year.

Mr. Sterling: But there was no move by the Premier or his staff to get this thing in line because there appeared to be a problem in January. Is that what you are telling us?

Mr. Fontaine: Not that I know of.

Mr. Treleaven: Mr. Fontaine, I want to ask you some questions about various companies. It is going to be dull, dry, repetitious stuff, Mr. Chairman, but I do think--

Mr. Chairman: There is no need to say that. I never asked the question. We already know that.

Mr. Treleaven: Right, but it is necessary. Perhaps you can snooze, Mr. Chairman, and we can get on with it.

Mr. Fontaine, there is a company you would know as Le Panache, but it is actually a numbered company known as 507383 Ontario Inc., which carries on business under the name of Le Panache. Are you a director, officer or shareholder of the company behind that numbered now? In fairness to you, you would know it as Le Panache.

Mr. Fontaine: I am a shareholder. I discussed Le Panache in my statement.

Mr. Treleaven: Yes, I know, but it is a corporation that really carries on business as Le Panache. That is only a name.

Mr. Fontaine: Pour les vêtements d'hommes, yes.

Mr. Treleaven: Are you now a director, officer or shareholder in that company?

Mr. Fontaine: Je ne suis pas un directeur. I am a shareholder but not a director, and it is in my blind trust.

Mr. Treleaven: Were you a director before?

Mr. Fontaine: No.

Mr. Treleaven: You were never a director. Is any relative of yours a director, officer or shareholder of that company?

Mr. Fontaine: No, I am alone in that company.

Mr. Treleaven: What kind of shares are they? Common shares, voting shares?

Mr. Fontaine: It is all in my statement.

Mr. Treleaven: Yes, but I do not think you go into the kind of shares and so on.

Mr. Fontaine: I do not know.

Mr. Mancini: It is point 50 of the statement.

Mr. Chairman: Just to help out here, on page 17 in the statement he said, "We each received one common share."

Mr. Treleaven: That is correct. One common share. No other shares.

Mr. Pratte: There are also 100 preference shares.

Mr. Treleaven: Yes, at \$50 each. Were they convertible preference? Can they be converted into voting, etc? You do not know. Is that correct?

Mr. Fontaine: Never had anything.

Mr. Treleaven: All right. Can we talk about Claybelt Lumber Ltd?

Mr. Martel: What the hell is this all about?

Mr. Treleaven: These companies are coming up in the statement of Mr. Fontaine in his summary of holdings in private corporations which he filed and which we have as exhibit 2/009. These are coming up.

Mr. Martel: Tie it to something for us. He is asking questions about it all. He has given you the information, for Christ's sake.

Mr. Laughren: All you are doing is repeating what is in the statement, as I understand that.

Mr. Chairman: Obviously, the committee would like your questions to be a little more direct.

Mr. Treleaven: All right. Let us go down to Arrow. I do not think Arrow Timber Co. Ltd. is mentioned, Mr. Fontaine. Are you a director, officer or shareholder in that company?

Mr. Fontaine: Hier matin, dans la réponse à M. Villeneuve, j'ai



expliqué ce qu'était Arrow. Alors je ne vois pas pourquoi je devrais recommencer à expliquer ce que c'est.

I can speak for three or five hours on Arrow Timber, as I did in the House, but I will not do it.

J'ai dit hier après-midi que Arrow Timber était une compagnie américaine qui avait été achetée par mon beau-frère, Aimé Joannis, qui a eu six enfants de ma soeur, dont deux qui sont morts.

She had more than that but two died at birth.

Il a acheté cette compagnie-là d'une compagnie américaine; c'était le seul propriétaire, puis il est mort d'un accident de skidoo, à 6h00 du soir, le 30 décembre 1968. Après ça, ma soeur a exploité la compagnie avec ses enfants et un gérant. Puis moi, je n'ai rien eu à faire dans cette compagnie-là.

Mr. Treleaven: I am having a slight amount of trouble, maybe in other ways, but a slight amount of trouble with my headset. I am getting a squeal.

Mr. Chairman: Are your ears on the inside or outside of the set?

Mr. Treleaven: Will you please repeat, are you a director, officer or shareholder of Arrow?

Mr. Fontaine: Je t'ai dit à la fin que je n'étais pas un directeur de Arrow Timber.

Mr. Treleaven: You say you never were?

Mr. Fontaine: No.

Mr. Treleaven: You never were a director, officer or shareholder. All right. Is any relative of yours a director, officer or shareholder of that company?

Mr. Laughren: There must be a purpose for asking.

Mr. Treleaven: Yes. There is.

Mr. Fontaine: Premièrement, je t'ai dit au commencement, tout à l'heure, que cette compagnie-là appartenait à mon beau-frère qui est mort. C'est ma soeur à qui ça appartient, avec ses enfants.

Mr. Treleaven: In answer to the question, no relative has ever held the position of director, officer or shareholder?

Mr. Fontaine: Yesterday I told him the story, now today I have told him the story of Arrow Timber about three times. Now he says my sister or some relation is connected with Arrow Timber. I have already said no four times today and one time yesterday.

Mr. Treleaven: This is relevant.

Mr. Chairman: Fine. Ask the question.

Mr. Treleaven: Mr. Fontaine said he has never been a director,

officer or shareholder of Arrow Timber Co. Ltd. I asked him whether any relative has.

Mr. Chairman: And he said yes.

Mr. Treleaven: All right. I will not get into the objects and so on. We will make this short.

Mr. Laughren: Are you going to explain the purpose of the question?

Mr. Treleaven: Yes, I will. I will leave off La Maison Verte which is, again, a numbered company. With regard to René Fontaine Holdings Ltd., are you a director, officer or shareholder now?

Mr. Fontaine: All those shares are in a blind trust.

10:50 a.m.

Mr. Treleaven: Fine. You were a director, officer and shareholder of that and the shares are in a blind trust.

Mr. Fontaine: I resigned as officer-director of that.

Mr. Treleaven: Okay. Let us go to Mooseland Timber Co. Ltd. Were you ever a director, officer or shareholder of that company?

Mr. Fontaine: No.

Mr. Treleaven: Was any relative ever a director, officer or shareholder of that?

Mr. Fontaine: Non, ça appartient à Lecours.

Mr. Treleaven: Okay, we certainly have Golden Tiger. Polar Lumber Co. Ltd.

Mr. Fontaine: Ce que j'ai dit hier, c'est que Polar Lumber a été formé lorsque j'ai acheté de mon père en 1958 ou 1959. Je n'ai pas la date exacte dans ma tête. J'étais le propriétaire. Peut-être que ma femme, à un moment donné, avait certaines actions dedans, mais je ne suis pas certain.

Mr. Treleaven: Okay.

Mr. Fontaine: The licence for operation was under Polar. This licence before was my father's licence or grandfather's--Fontaine Lumber--and when I bought part of my father's company, I named it Polar Lumber and I took over the bush operation and the sawmill. I was acting as a contractor for my father.

Mr. Treleaven: Thank you. United Sawmill: Is it correct you were or are a director, officer or shareholder of this company?

Mr. Fontaine: United Sawmill Ltd.?

Mr. Treleaven: Yes.

Mr. Fontaine: I was. Now everything is--it is the same thing; it is all in a blind trust.



Mr. Treleaven: Yes, but it is still in your name. Even though it is in a blind trust, it is still in your name. You are still the owner of those shares.

Mr. Fontaine: I was, yes, but United Sawmill--there are three companies in that. I said yesterday 42 per cent is owned by the Joanis family. Thirty-three per cent was my holding and the other 22 was another holding. It is people outside, Lecours.

Mr. Treleaven: But you do hold shares in United Sawmill Ltd. Does any relative of yours hold shares?

Mr. Fontaine: In this company there was ma femme. As to my share in United Sawmill, I just told you that my shares in United Sawmill are under my own name.

Mr. Treleaven: That is correct and I am asking you whether any member of your family or any relative holds shares in United Sawmill.

Mr. Fontaine: I told you that my sister is a shareholder of United Sawmill. Joanis--it is family and their family. There are three partners in United Sawmill Ltd.

Mr. Treleaven: Let us go to Hearst Forest Management Inc. To make this easy, is this not a corporation in which the shareholders are other corporations, one of which is United Sawmill?

Mr. Fontaine: Yes.

Mr. Treleaven: Do you hold any shares in Fontaine Lumber?

Mr. Fontaine: As I said yesterday, in 1965, after the death of my father, Fontaine Lumber took over the assets of Polar Lumber and the only thing Polar Lumber had under its name was the licences that we tried to change to Fontaine Lumber. They got on to the government and it said, "Well, leave it as it is." Fontaine Lumber is part of United Sawmill now and my holding.

Mr. Treleaven: Fontaine is part of--

Mr. Fontaine: Amalgamated with--

Mr. Treleaven: It was amalgamated. It was one of seven companies amalgamated into United Sawmill.

Mr. Fontaine: Maybe you were there when they--I would say that it was three companies that were amalgamated. You said seven; maybe that is right. There were lots of names, but maybe it was only--

Mr. Treleaven: Okay. Can you identify Lecours Lumber Co. Ltd. Is that not one of the corporations with United Sawmill--

Mr. Fontaine: No.

Mr. Treleaven: --in Hearst Forest Management Ltd.?

Mr. Fontaine: Wait a minute, in Forest Management, Lecours, yes.

Mr. Treleaven: Do you have any shares in that?

Mr. Fontaine: No.

Mr. Pratte: In what?

Mr. Fontaine: Lecours.

Mr. Treleaven: In Lecours Lumber Co. Ltd.

Mr. Fontaine: No.

Mr. Sterling: May I ask a supplementary? In terms of your holdings in United Sawmill, you said it was owned by your family. How was it owned by your family?

Mr. Fontaine: We are all in it.

Mr. Sterling: Is it a holding company that you have? Is it René Fontaine Holdings Ltd.? Are you still a director of René Fontaine Holdings Ltd.?

Mr. Fontaine: No.

Mr. Sterling: Why is that not filed with the Ministry of Consumer and Commercial Relations? The records of this government still show you as a director of René Fontaine Holdings Ltd.

Mr. Fontaine: They have my letter of resignation and everything.

Mr. Sterling: They have? Of René Fontaine Holdings? Would you provide us with any evidence that you have resigned as a director of René Fontaine Holdings Ltd. and the date on which that happened?

Mr. Pratte: Very briefly, I know what happened in that. He has resigned; we have the letter. We found out that the corporate branch was not advised and if it has not been cleaned up this week, it is just that the lawyer on behalf of the corporation did not file the registration. There is a resignation. That is why it was never recorded.

Mr. Sterling: That is in direct conflict with the guidelines, you realize.

Mr. Pratte: He has resigned, sir.

Mr. Chairman: I am going to stop you here. We had a little trouble yesterday afternoon with members of the committee debating with Mr. Fontaine's counsel. That is the end of that session. If you have a question, you can ask the witness and counsel can talk to the witness. Today counsel cannot talk to the committee and members do not get to ask him any questions. If you want him back as a witness, fine.

Mr. Treleaven: Mr. Fontaine, can we talk about timber licences for a moment? These are timber licences. Are you familiar with these timber licences granted by the province of Ontario to corporations?

Mr. Fontaine: Yes.

Mr. Treleaven: Does United Sawmill operate under a timber licence at present?



Mr. Fontaine: I do not know.

Mr. Treleaven: Has it in the past?

Mr. Fontaine: As I told Mr. Villeneuve yesterday, je ne sais pas à quel moment les permis ont été changés. Lorsque l'amalgamation des compagnies a été faite, les permis étaient au nom de chaque compagnie; il y en avait au nom de Polar Lumber, d'autres au nom de Arrow Timber et d'autres, peut-être à Mooseland ou Deep Forest. Ces permis-là expirent des fois après trois ans, deux ans, cinq ans. Alors je ne peux pas te dire exactement si aujourd'hui, présentement, les permis sont sous le nom de United Sawmill Ltd. Ca, je ne le sais pas.

Mr. Treleaven: Did you say you are or are not aware whether all licences are under United Sawmill Ltd.?

Mr. Fontaine: No.

Mr. Treleaven: You are not aware of where they are?

Mr. Fontaine: I am not aware.

Mr. Sterling, this is for René Fontaine Holdings Ltd., January 30, 1986: "I hereby resign as a director of the corporation effective immediately. I...also resign, effective immediately, from all offices which I hold with the corporation. Would you please ensure that an appropriate notice of change of directors and officers is filed immediately with the Minister of Consumer and Commercial Relations."

Mr. Sterling: Does that refer to René Fontaine Holdings Ltd.?

Mr. Fontaine: Yes.

Mr. Sterling: Who is that letter from and to?

Mr. Chairman: It would simplify it somewhat if you would table the letter with the committee and let everybody see it.

Mr. Sterling: Who is the letter from? Is it from you, Mr. Fontaine?

Mr. Fontaine: Yes.

Mr. Sterling: Who is it to?

Mr. Fontaine: To René Fontaine Holdings, to the corporation and directors.

Mr. Sterling: Who did not act on it?

Mr. Mancini: Excuse me, Mr. Chairman, let us get the letter to all members of the committee and then we will know what is being discussed.

11 a.m.

Mr. Chairman: I am going to intervene a little bit.

Mr. Treleaven: I am almost done.

Mr. Chairman: Yes, in more ways than one.

Mr. Treleaven: Mr. Chairman, we have to do this right, not fast.

Mr. Chairman: Maybe we have to do it left and fast.

Mr. Treleaven: Mr. Fontaine, you mentioned amalgamation of companies into United Sawmill. I have viewed and have with me articles of amalgamation that show that it is seven corporations. It is fair enough that your memory does not go beyond about three. According to the articles of amalgamation, three of those were Arrow Timber Co. Ltd., Mooseland Timber Co. Ltd. and Fontaine Lumber Co. Ltd.

Mr. Fontaine: Yes, sir.

Mr. Treleaven: Fontaine Lumber Co. Ltd. was formerly Polar Lumber Co. which was presumably renamed or reorganized.

Mr. Fontaine: I told you that twice or three times.

Mr. Treleaven: Right, and it is the same company. Why is it, according to my information, that timber licences have been, over the past number of years since 1981 when the amalgamation of these seven companies into one took place--your solicitor can advise you legally that corporations being amalgamated into another disappear as separate entities. They no longer continue to exist as separate entities.

Why is it that United Sawmill has been receiving timber licences since 1981, and three of these other, call them disappeared or defunct or amalgamated corporations have also been receiving separate timber licences; Mooseland Timber Co. Ltd., Arrow Timber Co. Ltd. and, in fact, Polar Lumber Co.?

Mr. Fontaine: La réponse à cela, vas la demander à ton gouvernement, celui d'avant. They are the ones who did that, not me.

Mr. Treleaven: Who would make applications for companies which do not exist?

Mr. Fontaine: First, those licences were there when you were in power and you are the ones who did it this way, not me.

Mr. Treleaven: I think you stated that you held the shares and were a director of some of these companies, Arrow, Mooseland Timber and Fontaine Lumber. Someone had to apply for these licences on behalf of those companies.

Mr. Fontaine: I think you know that when you are involved in a company you hire people to do the job. Then you apply for a licence and it is up to the government to decide whether the licence should be under the name of Polar, United Sawmill or Treleaven. It is not my business.

Mr. Treleaven: Did you not sign any applications on behalf of the companies?

Mr. Fontaine: I told you three times yesterday and today that the government at that time, which was a Conservative government, did not want to change the name of the licence and that had nothing to do with that.



Mr. Treleaven: They wanted to change the name of the licence to United?

Mr. Pratte: They did not.

Mr. Fontaine: You had better go back to 1958.

Mr. Treleaven: Did you not point out that these companies no longer existed?

Mr. Fontaine: They knew that.

Mr. Treleaven: They no longer existed and yet someone was filing applications on their behalf?

Mr. Fontaine: That is their business.

Mr. Treleaven: Can you tell me whether the land involved, the land that was being cut, was different in United Sawmill's licence and the other three companies' licences?

Mr. Fontaine: I see that you never were in the bush in your life because a forest is a forest. I do not care which company it is. It is the same thing, a swamp, black spruce, white spruce, jack pine, it is all the same, except if you live near Niagara Falls. There may be a big tree like that and a (inaudible) like that.

Mr. Treleaven: If four companies have licences, you are getting four times as much timber as one company. Is that correct?

Mr. Fontaine: No. I explained to Mr. Villeneuve the licence structure in the north. I started with 12,000 cords and through the bonté, the goodness, of Mr. Brunelle, he gave us 10,000 cords more in 1972. Then through the years we bought small jobbers with small licences. Lecours bought Gosselin. Our partnership bought the Co-op and Levesque bought somebody else, but Gagnon bought Christiansen.

We started with 12,000, another 10,000 from the government and finally we ended up with about 65,000 cords, which is very small when you compare that to the Quebec operators and the British Columbia tree people. If the names on those licences were not changed, it is not the fault of anybody in the company. The government employees did not want to change the orders in council. That is the question.

Mr. Treleaven: Are you saying that there is no more timber, no advantage to having four licences as opposed to one licence?

M. Fontaine: Il n'y a aucune différence, monsieur.

Mr. Treleaven: It makes no difference whether you have one or four?

Mr. Fontaine: You are supposed to know everything. If I have 12,000 here and I buy you and you have 5,000, it is still 5,000. If I buy his company, his assets, it is another 5,000, so 10,000, plus 5,000, plus 5,000 is 20,000.

Mr. Treleaven: Fair enough. You say it is the government's fault, the bureaucrats' fault, that applications were made in nonexistent companies,

which have ceased to exist--

M. Fontaine: Le permis est au nom de Polar Lumber in the beginning, okay. When Fontaine Lumber took over Polar Lumber, they kept the licence under the name of Polar Lumber. The reason they gave me and my manager at the time was they did not want to go through all the orders in council and go back to the cabinet. That was not done by Liberals, but by people involved at that time in the government. There is nothing wrong with that.

Mr. Chairman: I have been waiting patiently for somebody to point out to me how this is relevant at all to matters before the committee. I am getting somewhat concerned that, in my eyes, the answers are getting to be about as irrelevant as the questions. If there is relevance in this line of questioning, then I ask you to get to it.

Mr. Laughren: Which you promised to tell us.

Mr. Treleaven: There is relevance, because licences have been awarded as recently as August 1985, when Mr. Fontaine was a minister and a member of this government, licences to defunct, nonexistent, amalgamated, whatever you want to call these corporations. I am trying to get at whether there were benefits coming from timber licences. I think I am getting the answer that it does not matter, if the bureaucrats had wanted to and agreed to roll all four into United, there would have been the same number of trees cut, etc., as there would have been if they had stayed separate.

Mr. Fontaine: Yes.

Mr. Laughren: On a point of order, Mr. Chairman: I understood that when Mr. Fontaine tried to change the name of those so-called defunct companies, he was instructed by the ministry bureaucrats not to do so because it was much simpler to continue under the old names. I do not see what your point is.

Mr. Treleaven: It is quite improper, because a nonexistent person, a legal entity is applying for and receiving grants for a minister and a member.

Mr. Fontaine: I am sure if you look back, it is consistent with every application. It is not because it came in 1985. It was like in 1958 on Fontaine Lumber.

Mr. Treleaven: Yes, but these companies ceased to exist in 1981.

Mr. Fontaine: I expect so.

Mr. Chairman: Okay. Do you want to pursue this any more?

Mr. Treleaven: No, I am fine on that, but I think Mr. Sterling has a question.

Mr. Sterling: Mr. Fontaine, you stated it was the Ministry of Natural Resources, not you as applicant for these companies and as a director of these companies. You must apply for a timber licence, must you?

Mr. Fontaine: Timber licences were given away in 1952--I told you that yesterday--to all the operators in Hearst. Most of the time it is done by the forester. He signs the order. In the old days, it was the foreman of the camp. The head foreman used to do that with the clerk.



Mr. Sterling: You do not apply for it?

Mr. Fontaine: There is an application which goes in.

Mr. Sterling: Who signs the application?

Mr. Fontaine: Sometimes it is the manager; sometimes it is the forester.

Mr. Sterling: The company does not sign an application?

11:10 a.m.

Mr. Fontaine: They sign for it. Maybe they type Fontaine Lumber and they sign under it. Sometimes I sign and sometimes somebody else signs.

Mr. Sterling: You signed applications from 1980 to 1985.

Mr. Fontaine: I do not know. I said sometimes. Maybe I signed some in 1958 too. I do not know if I signed some of the ones in 1985. I do not know. These are done by the--

Mr. Sterling: You stated earlier that the Ministry of Natural Resources requested that you use the name of defunct companies. Is that correct?

Mr. Fontaine: I asked them a long time ago why they do not use Fontaine Lumber because it is a nice name. Fontaine is a nice name. Nobody in Hearst ever uses the name Polar. If you go to Hearst, they will all say, "We work at Fontaine's." I wanted to use the name of my father and they said, "That is too much work." It is quite a bit of work. You have got to go back to that order in council, and I guess they did not want to, but that is a long time ago and we kept with the same thing like that. I am talking about Polar Lumber.

Mr. Sterling: In 1980 or 1981, these companies became United Sawmill.

Mr. Fontaine: They kept the same thing.

Mr. Sterling: You claim that the Ministry of Natural Resources requested--

Mr. Fontaine: I did not say "claim." I talked about Polar and they did not want to change it to Fontaine. In 1981 or 1982, there was a manager who took care of that. I do not know the reason. I am talking when I was there, Fontaine Lumber and Polar Lumber from 1958, why did they not change it to Fontaine. In 1965, it became Fontaine Lumber. Then at United Sawmill I was only a small peanut. There was a manager and there were other people doing that.

Mr. Chairman: Mr. O'Connor may help us out.

Mr. Sterling: Can you tell us which official of the Ministry of Natural Resources instructed you as such?

Mr. Fontaine: That is 1965.

1985. Mr. Sterling: No. I am talking about 1981, 1982, 1983, 1984 and

Mr. Fontaine: I repeat to you that in 1981 and 1982 this section was all run by a manager and foresters.

Mr. Sterling: They ran your company?

Mr. Fontaine: No, no. My side of the company, as I told Mr. Villeneuve, was the sawmill and labour relations and the other guy, Lecours, took care of the bush. I was taking care of the sales and the rest. I had nothing to do with the bush since 1981 directly. When I was sole proprietor for the lumber, I was taking care of everything with managers and foresters.

Mr. Martel: Mr. Chairman, since this obviously is just going to keep going around in a circle as to who did what in 1981, 1982 and 1983--

Mr. Treleaven: And 1985.

Mr. Martel: I will get to 1985 because that is where you should have picked the parts up. The other four years that you have been talking about and we have been listening to for an hour now was under another regime. I am simply saying if you want to cut it short, bring the guy from the Ministry of Natural Resources responsible for how the process works rather than try to fish, cut bait or whatever you want to do. If you want to deal with 1985, let us deal with 1985. I understand what you are driving at, but boy, it is painful the way you are trying to get at it.

Mr. Chairman: Mr. O'Connor--

Interjections.

Mr. Martel: If we bring the Ministry of Natural Resources people here, we can find out how they do things.

Mr. Chairman: Before we proceed, I sense that the committee is growing very restless and are having a tough time, as I am, to tell you the truth getting the relevancy aspects of this together.

Mr. Treleaven: We are being thorough.

Mr. Laughren: I would not mind if you were being thorough.

Interjections.

Mr. O'Connor: May I point out for the record that those applications continued into 1986. In fact, the last one that is recorded is April 17, 1986, when United Sawmill, which does not exist any longer, got a timber licence.

You were not here and you do not have the benefit of this, but I will advise you and you can read the transcript. On Monday, I asked the Ministry of Natural Resources' officials as to their procedure when granting timber licences, what searches they made and what information they sought. They very clearly said the one thing they did do, in addition to examining some financial information of the company, was to search the corporate record to see that they exist. You are now saying they did not do that with these companies, but they encouraged you to continue applications in names of companies that were defunct. Is that correct?



Mr. Fontaine: Non, non, j'ai parlé de Fontaine Lumber and Polar Lumber. I never said about United Sawmill. I am talking in 1965 or around 1967. When the licences came due, I asked them to put them in the name of Fontaine instead of Polar Lumber and they did not do it. I asked the government at that time and they said it was too much work. I do not know if the guy is still alive.

Mr. Fontaine: If they searched the records and they found it did not exist, why did they issue the shares since 1968?

Mr. O'Connor: That is why I asked the question because there is obviously a great discrepancy between what they are saying and what you are saying.

Mr. Fontaine: Je ne le sais pas, I am not an employee at the Ministry of Natural Resources.

Mr. Treleaven: Just a last, final question. How many acres are involved or what volume comes out under these licences?

Mr. Fontaine: We figure it is around about 63,000 or 65,000 cords.

Mr. Treleaven: Per year?

Mr. Fontaine: Per year.

Mr. Mancini: I just think we have a former Provincial Secretary for Resoures Development here who served in 1983. Maybe he could help us as far as these licences go.

Mr. Chairman: Nice try. The provincial secretary was Mr. Sterling.

Mr. Fontaine: We will go for a break in a minute. Mr. Chairman, can I go for a break?

Mr. Chairman: Are we asking for a short recess?

Mr. Fontaine: Yes.

Mr. Chairman: Okay, five minutes.

The committee recessed at 11:16 a.m.

11:28 a.m.

Mr. Chairman: We are ready to resume. Mr. Sterling has the floor.

Mr. Pratte: I have a copy of the last undertaking that Mr. Fontaine had to satisfy. It is a copy of the escrow share certificate.

Mr. Chairman: Good. Mr. Sterling, proceed.

Mr. Sterling: Mr. Fontaine, at the time of your meeting with Ms. Eberts in June 1985, were you given any documentation as to what the conflict-of-interest guidelines were?

Mr. Fontaine: I do not remember. My accountant was there at that time.

Mr. Sterling: Can you recall when you first received any conflict-of-interest guidelines?

Mr. Fontaine: The document, only I do not know anything about it; I think it was in the fall, September or October. It was September. That is Blenus Wright's letter.

Mr. Sterling: That is the first you were aware of actual guidelines?

Mr. Fontaine: Yes. There was a discussion maybe between Mary and my accountant.

Mr. Sterling: Mary Eberts and your accountant?

Mr. Fontaine: André Gagné. As I said in my statement, he took all that and he worked at it. He decided which way we were going.

Mr. Sterling: Was there any indication prior to September that you were using the conflict-of-interest guidelines that were the 1972 guidelines of the previous government? Was there any indication to you that they were using those guidelines?

Mr. Fontaine: No. I do not know, sir.

Mr. Sterling: There was no concern about that at that time, other than what Ms. Eberts--

Mr. Fontaine: Not in front of me.

Mr. Sterling: The old guidelines said that no private company in which a minister or his family has an interest may become contractually involved with the government of Ontario. Those were the old guidelines under which I lived, as did the other members of the executive council of the previous government.

The guidelines now read differently and I suspect might have been changed in order to accommodate your interests. The Premier has quoted them on several occasions. They now say that no private company in which a minister or his or her family has an interest may become contractually involved with the government of Ontario unless the interest of the minister or the family has been placed in a blind trust set up in accordance with these guidelines.

Mr. Mancini: I object to the accusation that the corporate policy of the government of Ontario was changed to accommodate one person. I object to that accusation.

Mr. Sterling: I am going to ask Mr. Fontaine whether they were changed in order to accommodate him.

Mr. Mancini: Whether they were changed or not, the statement was an insinuation that the corporate policy and the guidelines were changed to accommodate one person. That was clearly the accusation.

Mr. Sterling: To your knowledge, Mr. Fontaine, were the guidelines changed in order to accommodate your interest in United Sawmill?

Mr. Fontaine: To my knowledge, no.



Mr. Sterling: You have no knowledge that they were changed in order to accommodate your interest in United Sawmill.

Mr. Fontaine: No.

Mr. Sterling: Since you became a minister, can you tell me whether you have had meetings or discussions with the following people from the Ministry of Natural Resources: Mr. Markus, who is the director of timber sales; Ken Armson, who is the executive co-ordinator of the forest services group; Tom Tworzyanski, who is the forest management agreement co-ordinator; Bill Therriault, who is the district manager in Hearst; Ron Calvert, who is located in Thunder Bay--

Mr. Chairman: This is another one of those impossible questions. You are reading off a list of names and asking if he has ever met any of these people. If you do it one at a time, you might get somewhere with it. You are asking, "Have you ever met anybody on Yonge Street?"

Mr. Sterling: No, I am not.

Mr. Chairman: Go a little more specifically.

Mr. Sterling: No, I am not. I am giving him the full names of 10 people in the Ministry of Natural Resources. Have you had discussions or meetings with Mr. Markus, director of timber sales?

Mr. Fontaine: When?

Mr. Sterling: Since you became minister and up to the time you resigned as minister.

Mr. Fontaine: I had discussions with Mr. Markus about projects outside what you are fishing for.

Mr. Sterling: So you had meetings with him in relation to other forest management--

Mr. Fontaine: No. I had meetings with Mr. Markus about other projects. I was looking with somebody for waferboard. We discussed the Sudbury area and the area between Renfrew and Bancroft. I met with Mr. Armson on one or two occasion about the FMA of Mr. Buchanan. He wanted an FMA in the Hudson area. I arranged a meeting for Normick Perron.

Mr. Sterling: Mr. Armson?

Mr. Fontaine: Markus and Armson are the ones in charge of timber sales. I met them with other operators from outside the town of Hearst. Normick Perron operates in Kirland Lake and Cochrane and Ken Buchanan operates in Hudson. Mr. Bernier could not arrange this meeting apparently, and I arranged it myself. They were after an FMA. I met with all those people, and with the native people two of three times too, about the whole involvement of native people in forestry in the northwest.

Mr. Sterling: Did you meet with Mr. Tworzyanski?

Mr. Fontaine: I met him in 1984-85 when we first started about the FMA. He is the one who came first to give us the preamble of what the FMA is all about.

Mr. Sterling: Have you ever met with him since that time?

Mr. Fontaine: No.

Mr. Sterling: Mike Clarkson?

Mr. Fontaine: No. I met him at church.

Mr. Sterling: Don Stillar?

Mr. Fontaine: No.

Mr. Sterling: Sheila MacFeeters?

Mr. Fontaine: No.

Mr. Sterling: Since becoming a member of the Legislature, have you ever talked to the Ministry of Natural Resources about the FMA at Hearst?

Mr. Fontaine: As a member?

Mr. Sterling: Since May 2.

Mr. Fontaine: Yes, one day I went across the floor of the House when Mr. Harris was the minister and asked him about a rumour--I was asked by the people, no doubt because I was the MPP--that he was changing direction and stopping the FMA. I asked him whether he was following the same direction as in the letter he wrote to us a few weeks before. He said he would think about it, and the next day he told me they were going ahead.

Mr. Sterling: So your statement to the House on January 30, and I quote page 3615 of Hansard, "Since May 2, 1985, I have had no involvement in either United Sawmill or Hearst Forest Management," was incorrect.

Mr. Fontaine: I asked him the question. What is the involvement in asking the question, "Are you following the same rule?" That was it.

Mr. Sterling: Do you not consider that an involvement?

Mr. Fontaine: Is it an involvement to ask whether he is following the same rule?

Mr. Sterling: Do you not consider a question to a minister about a management agreement in which you have significant benefit an involvement?

Mr. Fontaine: Significant benefit is only a myth in your head. There is no benefit in an FMA. Benefit to whom? Tell me where the benefit is in an FMA, if you are so smart?

Mr. Sterling: Since you ask the question, the Ministry of Natural Resources told us the other day that there will be somewhere between \$45 million and \$50 million flowing through the FMA.

11:40 a.m.

Mr. Fontaine: In the pocket and then you keep that money?

Mr. Sterling: It would be used, I guess, to further the interests of the people who were cutting and developing your--



Mr. Fontaine: I will give you a little history on this one. The Tworzyanski guy you are talking about, when he first came to give us a preamble we asked, "What is an FMA?" "Que nous offre le contrat de gestion forestière?" "Can you tell me what is in it for the company, an FMA?"

He looked at us and he said: "There is nothing in it for you. An FMA is for the benefit of the people and the region and its workers to be assured that there are other years of forests, that we do not play the game, five years in Chapleau and then for 10 years the small operators of sawmills used to have to wait. Every time you see the newspaper, 'We are running out of timber.' This way, the people who have invested money in Hearst, in the area, will be guaranteed there is a future and the workers would get a guarantee in the future."

He looked at us like that and he said: "The company, if you manage it right, because you are going to be the manager, then maybe there will be a future for you if you manage it right. If you do not, we will take it away from you, and when it is there, you will have zero." That is the first thing.

The benefit you are talking about, the \$25,000 or \$34,000, that money is being used to pay for salaries, to make the roads, the scarifying, to plant the trees, to do all the things your government was doing. That is the question. If it rains, you are in big trouble if you do not watch the way you are cutting. Now you have to buy tires that cost at least \$10,000 or \$15,000 to save the land so that it costs less when you come to scarify. That money goes there. It does not go into the pocket to benefit anybody except to benefit the region and the people in the province to have more trees. What you are doing right now with the FMA is trying to say that people have everything in Hearst.

Right now, the trees are being eaten by budworms. There are two companies working right now to go to those trees because the FMA, you go in and cut the old trees first. The old trees right now, what we are doing here today, they are getting budworm infestation and the roads are not being built to go there. Who is suffering? The people of the province and people over there, not me. You are doing that, not me. We are talking of the FMA. That is what we are doing right now. It is the people of the area that benefit, not the company. That is all a myth.

Mr. Sterling: Then you deny, Mr. Fontaine, that \$45 million to \$50 million will probably flow through the Hearst forest management agreement over the next 20 years? Is that what you are telling me?

Mr. Fontaine: If there is a profit, it is your government that allowed the company to have a profit, because, at first, apparently, you were paying too much money for the roads. Now it is being cut, cut, cut to nothing pretty soon. You know that yourself, because at first you gave too much when you started with those FMAs, not me.

Mr. Sterling: I believe our party asked early in January for an economic analysis of this forest management agreement. We have not yet received any from your government or from your former colleague the Minister of Natural Resources (Mr. Kerrio). We can only assume that, from the evidence given to us on Monday, there is this flow-through of \$45 million to \$50 million that is going to occur over the next 20 years and that the interest in the company in which you have a substantial interest, United Sawmill and Lecours Lumber--

Mr. Fontaine: Lecours has no interest in that.

Mr. Sterling: They are not a 50 per cent owner of Hearst Management?

Mr. Fontaine: No. Lecours has no relation with them. I told that to Mr. Treleven here.

Mr. Sterling: You have no--

Mr. Fontaine: With Lecours.

Mr. Sterling: You have no relatives that are involved with--

Mr. Fontaine: Lecours?

Mr. Sterling: Yes, Lecours.

Mr. Fontaine: No, no. You think we are all married together over there, the way it looks?

Mr. Sterling: I was not asking about your wife--

Mr. Fontaine: I would wish that my daughter would be married to Lecours. I would not have to be here today.

Mr. O'Connor: I am having a little difficulty with all of this evidence. Are you saying to us that there is really nothing in it for the companies that hold a forest management agreement and operate the cutting, reforestation and roadbuilding in that area for a period of 20 years? Surely there has to be a modicum of profit to everybody involved or you simply would not be interested in applying for the FMA. Am I not correct in that?

Mr. Fontaine: It is a program your party did.

Mr. O'Connor: Regardless of the political implications.

Mr. Fontaine: That is okay. It is a good program. Quebec is looking at it. The reason we will go with an FMA is to be sure we manage the forest instead of the government, and manage it right. We pay for some production. We pay land tax we did not pay before. We used to pay about \$10,000 for the small amount we are talking about. Now the companies around Hearst will pay over \$200,000 a year, whereas they used to pay only \$30,000.

We have all that to manage. The other people are there to watch. When Mr. Sterling was the manager of that money, I am sure he did not give money to pulp and paper to benefit it, especially with the situation in the United States right now. In the past four or five years they have been accusing the government of paying for our production. I am sure that the government, at the time it made the FMA, made sure that we were not making a profit on that money.

If you look back, I am sure Mr. Sterling can tell you that at first they were probably paying too much to build certain roads. Apparently, that was adjusted. You have to pay contractors and roadbuilders, because sometimes you have to build roads yourself, but it is to the benefit of the people of Ontario. If, by a fluke, the weather is good, you might make a profit on the roadbuilding, but you could lose your shirt on the tree planting or scarifying.

For the past year, the government did not give money away to companies



to make money. I am sure of that. You saw the same example with the tree nurseries. At first, apparently, it was paying a little too much, but now it is cutting back on that as well.

Mr. O'Connor: Regardless of what happened in the past and where the political fault lies, I suggest there is great advantage to companies to enter into a contract that has a term of 20 years, during which time they will manage, cultivate, plant and cut, and during which time they will make their fair share of profit. There are two aspects to it that are very attractive to private investors such as Hearst Forest Management Inc. The first is a fair profit over that period of time and the second is the security, a 20-year contract whereby they no longer have to apply on an ad hoc basis, annually or every two years or whatever for timber-cutting licences. That is the attraction. It is the security to a company such as Hearst Forest Management. That is why people are lining up to get it.

Mr. Fontaine: The security is there if it is managed right. The people from the government told us--

Mr. Mancini: Mr. Chairman, on a point of order: Do you not think it is unfair to have committee members questioning Mr. Fontaine about actions taken by a former government, by a former cabinet member who is here today, about some economic benefit that he or his company might receive, when the program was established by the last government? Why did we not have economic benefit studies at that time? It is unfair to have Mr. Fontaine try to answer for actions taken by the last government. Those questions are very unfair.

Mr. Chairman: They may be unfair, but that does not concern me as much as the fact that they appear to me to be rather irrelevant. That does bother me.

Mr. Martel: I do not want to get into the history of forest management. Both sides have screwed it up for 40 years.

Mr. Chairman: I knew you would not get into it.

11:50 a.m.

Mr. Martel: I have difficulty in quite accepting what Mr. Fontaine is telling us. I realize that there are costs and that you have to put up the money to build roads, but there has to be an end result. Part of the end result is that we have proper silviculture and there has to be benefit for a company; otherwise it would lose its shirt trying to work it. You cannot work for ever, lose your shirt every year and stay in business. I think what my friends are fishing for, somewhere in between what you are saying and what they are saying, is a happy medium that makes it advantageous to both sides to have it done that way.

Mr. Chairman: That is a very interesting argument and I am sure we will have this argument. I am not going to preclude us from having this argument. I am begging somebody in here to make this relevant to the hearings of this committee now.

Mr. Sterling: The whole issue was raised out of the answer the witness gave. I asked a fairly short question and expected a fairly short answer.

Mr. Chairman: Let me stop you there. If you want to ask very general

questions about large matters such as forest management agreements, you can anticipate you will get very general and probably lengthy answers. If you want the answers to be brief, the question not only has to be brief but it also has to be relevant to the matters before the committee. I am not placing any restrictions on anybody. We have let everybody ramble all over the map. I am just making a plea for relevance.

Mr. Treleaven: On and on, we are characterizing these questions--or some people are--as fishing. They are not fishing when you ask a straightforward question and try to get a straightforward answer.

Mr. Chairman: Hold it right there. Nobody has stopped anybody from asking any questions, fishing or otherwise. All I am saying is go ahead and ask your questions.

Mr. Sterling: Mr. Fontaine, you were a director of Hearst Forest Management Inc. Is that correct? You have stated that before.

Mr. Fontaine: Yes.

Mr. Sterling: You were one of the three incorporators of that company originally?

Mr. Fontaine: Yes.

Mr. Sterling: As you indicated to us a few moments ago, as of the May 2 election, you realized the issue had not been resolved in terms of bringing the forest management agreement to fruition.

Mr. Fontaine: What are you talking about? What do you mean? After the May election?

Mr. Sterling: Yes.

Mr. Fontaine: Okay, continue.

Mr. Sterling: I am saying by your question to Mr. Harris, you are telling us that at that time, you were aware, because of your involvement with the management company and with United Sawmill, that the agreement had not been reached at that time. Is that correct?

Mr. Fontaine: What are the guidelines for an MPP?

Mr. Chairman: They are in the Legislative Assembly Act, interpreted as sections 10, 11, and 12.

Mr. Fontaine: What do they say?

Mr. Treleaven: They say in there that an MPP cannot make benefits from dealing with the government.

Mr. Mancini: Do lawyers ask questions about legal aid?

Mr. Treleaven: That is on the border. Mr. Germa brought that up.

Mr. Fontaine: What do you do if somebody--I do not care if it is not my company, but the other company comes to see you. The question I asked Mr. Harris was a simple question, "Are you following the same thing that you said



in the letter?" He said, "Yes." Then on top of that, later my shares were all in United Sawmill and they were put in a blind trust when I was a minister. Nobody told me on the first day we went into the House that I could not talk to another minister. Nobody told me that.

Mr. Sterling: Mr. Fontaine, I am trying only to elicit the facts in the situation.

Mr. Fontaine: After that, everything was put in a blind trust. When I became a minister, I worked. Everything is in a blind trust and I complied with the guidelines.

Mr. Sterling: That is what we are here to determine.

Mr. Fontaine: I am sure at one time as an MPP you must have asked something to some minister for your friends or your own people too. Do not tell me the contrary. I got proof of that a long time ago.

Mr. Sterling: I am not in front of a committee. It was just an inquiry.

Mr. Fontaine: The saints.

Mr. Chairman: That is an accusation you cannot make against anybody on this committee.

Mr. Fontaine: They did nothing wrong. Their hands are clean.

Mr. Chairman: Their hands may be clean, but we are not saints. Not yet.

Mr. Sterling: Mr. Fontaine, is it not true that the problem in the Hearst area relates to an inadequate supply of lumber for the three operators in the area? Is there not a real problem in terms of supply?

Mr. Fontaine: I am not the forestry--ask the government about it.

Mr. Sterling: Mr. Fontaine, you resigned as the director of Hearst Forest Management Inc. on January 30, 1986, so you were a director of--

Mr. Fontaine: And I gave the reason for my resignation at that time. I told that and I said I thought we were doing a blind trust and nobody had told me I should sign all those letters. When I gave it to the blind trust, I thought that was all being done.

Mr. Sterling: Mr. Roland Cloutier was appointed in your stead on the forest management agreement. Is that correct?

Mr. Fontaine: I do not know.

Mr. Sterling: I believe your solicitor has a copy of that. You signed this particular--I am sorry, you did not sign this. This was a resolution of Hearst Forest Management Inc.

Roland Cloutier was appointed as a director. Is that the same Roland Cloutier who has been appointed to the Northern Ontario Development Corp.? It is the same one?

Mr. Fontaine: The same Roland Cloutier was the campaign chairman for Mr. Brunelle all through his years, a good Conservative, a good Tory. At the last election, when Mr. Piché was \$15,000 in the hole, Cloutier collected \$8,000 in Hearst for Piché. He is my friend, but he is a very good Conservative. When we asked to put people on NODC, we were told to put some Conservatives and Liberals. I put Mr. Cloutier there because he was a Conservative and a good man too.

Mr. Sterling: He is a business partner of yours, or was formerly?

Mr. Fontaine: No. He was not a business partner. He was managing a company. He managed three companies in Hearst before Levesque, and he came to Hearst. He was an employee of my sister first. Then when United Sawmill came, he became a manager of United Sawmill. He retired last year--1984.

Interjection: 1985.

Mr. Fontaine: 1985, excuse me.

Mr. Sterling: Is Mr. Cloutier related to you?

Mr. Fontaine: He is married to one of my distant cousins. As I told you, in a small town sometimes you are related to everyone. You should know. What a question.

Mr. Sterling: Since April 1985, there has been a considerable fight over the Hearst Forest Management Inc. between United Sawmill and Lecours versus or against Levesque, who is another operator in the area. Are those the three major operators in the Hearst area?

Mr. Fontaine: Yes.

Mr. Sterling: They are the three major operators. Looking at the minutes of meetings which have occurred with the Ministry of Natural Resources, a copy of which your counsel has, the question is raised quite a number of times about the surplus in distribution of licences that would funnel through the forest management agreement. Mr. Levesque states that he is very much concerned that he is not going to get a fair break on that kind of thing or the allocation of roads or anything else.

Mr. Pratte: Can the exhibit be pointed out to me?

Mr. Sterling: The exhibits are in that big folder, which I read through last night. If you did not read through them, that--

Mr. Pratte: If you give me the number, it would assist me.

Mr. Sterling: There ain't no numbers.

Interjection: They are not numbered.

Mr. Chairman: He is making reference to the complete file on the forest management agreement that was provided to the committee by the ministry. In that file are various letters from Mr. Levesque dating back as far, I believe, as 1983 or 1984 indicating his position on the forest management agreement. There are several.

Mr. Fontaine: Did he give his reason in those letters?



Mr. Chairman: Yes.

Mr. Sterling: Yes.

Mr. Fontaine: He said everything that occurred to him in Sudbury.

Mr. Chairman: Yes.

Mr. Sterling: Yes.

Mr. Treleaven: May I make a suggestion? It is after 12 o'clock and the solicitor has four inches of paper to go through. Is this a good time to break while we are struggling with trying to find this? In fairness to the solicitor, it is not like a court where everything has an exhibit number. Nothing in here has an exhibit number.

Mr. Pratte: How about a date?

Mr. Chairman: If you would identify the letter by date--

Mr. Sterling: It is a memorandum to file by Mr. Tworzyanski, who is the FMA co-ordinator, dated 1985, the 27th of the ninth month.

Mr. Chairman: September is the ninth month. We have had a suggestion that this would be an appropriate time to take a break. Is that agreed? Does anyone want to come back earlier than two?

Mr. Sterling: Perhaps in fairness to counsel and to Mr. Pratte--

Mr. Chairman: We will get the memorandum and put it in your hands.

Mr. Mancini: We have kept Mr. Fontaine here for a second day. He mentioned last night that he had made plans to leave for Hearst this evening. If we come back half an hour early it might be a good idea, but I am not going to impose that on the committee if it does not wish to do so.

Mr. Chairman: We have a problem with meetings set up at 1:30 p.m. We are adjourned until two o'clock.

The committee recessed at 12:03 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ALLEGED CONFLICT OF INTEREST

THURSDAY, JULY 24, 1986

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breagh, M. J. (Oshawa NDP)

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Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Substitutions:

Hart, C. E. (York East L) for Mr. Morin

O'Connor, T. P. (Oakville PC) for Mr. Johnson

Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Turner

Clerk: Mellor, L.

Assistant Clerk: Decker, T.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

Fontaine, R.

Pratte, G., Counsel to Mr. Fontaine; with Blake, Cassels and Graydon

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, July 24, 1986

The committee resumed at 2:08 p.m. in committee room 1.

ALLEGED CONFLICT OF INTEREST  
(continued)

Mr. Chairman: We are ready to proceed with the afternoon session.

Mr. O'Connor: On a point of order, Mr. Chairman: As a result of the questioning this morning surrounding the letter from the solicitor for the Ministry of Northern Development and Mines to Blake, Cassels, it has occurred to me that it might be very useful to the committee to have before us the grant and tax concession files referred to in that letter from the ministry. I am wondering if we might make the request of legislative counsel to obtain the four files. They have file numbers and they are easily identified.

Mr. Chairman: Three files as I recall.

Mr. O'Connor: Three files and a renewal. Perhaps that may constitute a fourth file. Could you could make inquiries as to whether Mr. Eichmanis could obtain those.

Mr. Chairman: Yes. Do you have those, John?

Mr. Eichmanis: Yes.

Mr. Sterling: Before lunch I was referring to a letter of September 27, 1985. Mr. Fontaine, at that time you were still a director of Hearst Forest Management Inc. and you still owned shares in United Sawmill that were not placed in a blind trust. I refer to paragraph 6 where there is obviously a dispute between Mr. Levesque versus United Sawmill and Lecours, Lecours and United Sawmill having joined up with Hearst Forest Management Inc. It indicates in here that in discussions with Markus and Tworzyanski, the feeling is that the forest management agreement holder should do the negotiating and the ministry should sit on the outside. The FMA holder is now with the big boys and has to carry on business in that fashion. Would you like to make any comment about that?

Mr. Fontaine: I was not there. I do not know what you are talking about.

Mr. Sterling: You were not there and you were still a director of Hearst Forest Management Inc.

Mr. Fontaine: I was told by my adviser to stay away from this. Then, after that, everything was put in a blind trust. I do not know. I saw the letter over here that you are talking about. That is it.

Mr. Sterling: At that time, you still owned United Sawmill and it was--



Mr. Fontaine: I was there at that meeting, sure. I had been advised to stay away from my companies and I did. Then, later on, I put everything, United Sawmill, in a blind trust.

Mr. Sterling: There is a second document I would like to refer to that is in your file. I am sorry I was cut off before lunch, because I wanted to indicate to counsel the documents I would be referring to so that he would have some prior notice, Mr. Chairman.

Mr. Chairman: It was your colleague who cut you off.

Mr. Sterling: I believe it was a number of colleagues. I think one behind me as well.

The next one is October 22, 1985, which is the minutes of a meeting of October 22, 1985, relating to the Hearst Forest Management Inc. FMA. I refer to page 2 of that meeting. It says, "The FMA holder will have exclusive right to surplus on the Opasatika unit, amount determined as percentage of total surplus compared with per cent of total AAC on unit." Then, further down, "Lecours Lumber will be given 13,000 cords off the top of the surplus from Albany, Pitopiko, Hearst, Oba area. Any deficit will be shared equally by Lecours, United and Levesque. Other third parties do not share in surplus."

At this time, you were still a shareholder of United Sawmill, the 50 per cent owner of Hearst Forest Management Inc. You were still a director of Hearst Forest Management Inc. Were you aware of this meeting?

Mr. Fontaine: No.

Mr. Sterling: You did not, obviously, participate from the people present?

Mr. Fontaine: Mr. Chairman, I do not know from the way he talks that those things are cast in concrete. I do not know. Are they signed? Is the FMA signed? They are saying there that those companies took that away. They took that away from whom? If I recall, a few minutes ago they told me that this FMA is not signed yet. From what you are just telling me, those things show me the way they are negotiating and you make me feel that this is all cast in stone, it has all gone, Levesque is--

Mr. Chairman: Let me try to help a little bit here. I do see there is some relevancy in trying to establish whether Mr. Fontaine was a participant in these deliberations and at what time and under what conditions. I think I would have to let that line of questioning go.

I do not see the relevancy, frankly, over any of the details of a forest management agreement that is not yet signed. In other words, if you are trying to establish that he was participating in the development of the agreement, I could see where that could be construed as being relevant. On the details of the negotiations or the proposals, other than those he might have been actively participating in and trying to work out, I really have a tough time finding the relevancy of that. I am prepared to let the questioning go. I think that is fine, but there are a couple of limits on it.

Mr. Sterling: There was an attempt by Mr. Mancini to portray that this deal was all wrapped up before this present government came into being. I am glad Mr. Fontaine has confirmed in his testimony now that the process had begun, but it certainly was not finished at that time.

Mr. Mancini: On a point of order, Mr. Chairman.

Mr. Chairman: Okay. That is fine. Mr. Mancini has a point of order.

Mr. Mancini: Yes, Mr. Chairman. If Mr. Sterling can verify that by Hansard, I would be glad to read it. If he cannot, then he should not say I made those statements. What I have been saying all along--and I have read from the documents that were presented to us as a committee--is that these negotiations for the FMA started in 1983. It was made public at a press conference by Mr. Pope in his home riding. Mr. Sterling was then the resources secretary under whom Mr. Pope operated, I am assuming. That is the way the government worked at that time. Those are the points I tried to make, and that it was unfair for Mr. Sterling to try to get Mr. Fontaine to explain the policy of the past government.

Mr. Chairman: All right. I am accepting that as whatever it was. All I am saying is that from this point on I would like people questioning this witness to put the relevancy foremost. In other words, if you are trying to establish that Mr. Fontaine was actively participating in these negotiations while he was a minister of the crown or a member of the assembly, I see the relevancy in that. Frankly, I am losing any concept of relevancy when you move on out into these other areas. There is a line of questioning here that is pertinent. I am trying to get you to go down that line.

Mr. Sterling: Mr. Chairman, if one reads the correspondence that was supplied to us, and I refer to a letter of December 23, 1985, from Mr. Levesque to Mr. Therriault, the district manager of the Ministry of Natural Resources, a letter from Hearst Forest Management Inc. dated April 29, 1986, and a letter from Mr. Levesque again to Mr. Kerrio, the Minister of Natural Resources--all these documents are public--dated April 24, 1986, it becomes apparent that there is a serious conflict between Levesque versus Lecours and United.

When you get down to the final letter that I will refer to, to try to gap the whole matter of the negotiations between these various parties, the summary is referred to in the letter from Hearst Forest Management Inc. to Mr. Therriault on May 3, 1986, and the letter of May 29, 1986, to Mr. Therriault that Mr. Levesque wants to become part of Hearst Forest Management Inc. and both Lecours and United are resisting that particular matter.

The reason I want to bring those particular letters to the fore is in the light of Mr. Fontaine's statements about why he resigned. Mr. Fontaine has said, "I had said if Hearst did not get this FMA that I would resign." The point is that United was involved in a conflict in terms of getting this FMA signed and Mr. Fontaine has significant interests in United. I do not know what the motives were for Mr. Fontaine bringing forward his statement in which he said, and this was after he resigned, "If Hearst did not get this FMA that I would resign."

Mr. Fontaine, why did you make that statement?

Mr. Fontaine: First, we have to go back on all of what Mr. Sterling said. Seeing that he knows Mr. Levesque very well, because one of the letters I received, and one went to his caucus to Mr. Grossman--

Mr. Sterling: Mr. Chairman, on a point of clarification: I have never talked to Mr. Levesque.



Mr. Fontaine: No, but the way you are talking.

Mr. Sterling: I have only read the letters.

2:20 p.m.

Mr. Fontaine: I first met Réal Lévesque in his office in 1984 and he asked me to phone Mr. Pope to get a meeting to get this FMA going. Okay? Then I asked, "Why do you not phone?" and he said, "I do not want to phone." So I phoned Mr. Pope. We arranged a meeting for Friday at 11 o'clock that week. We flew in Levesque's plane, Larry Lecours and myself. The spokesman at that meeting with Mr. Pope was Réal Levesque all day, asking him to follow up what Mr. Pope had said in Timmins, that the Hearst people should be co-operative in an FMA.

Then there was a meeting before Christmas that year and everything was okay. Then between ourselves we had another meeting. We had to find out how we could have a co-operative. We had no idea. I discussed that myself. I said: "Why don't we form a real co-operative and put all the conditions, the licences? I think we are going to have to return that to that company and be a third party."

The manager of Lecours Lumber that day, René Viel, said that if we were going to do that, we would have to make sure nobody owes money in crown dues. That was at that meeting. Later on, Mr. Levesque had a third meeting. We waited for him in Kapuskasing; he was supposed to be in Toronto. Finally, he arrived at the meeting and he decided not to go into the co-operative at that point.

Then Mr. Pope came over here around the time of the leadership of Mr. Miller, and he spent a week or two around here, apparently. Then we received a letter from Mr. Pope on February 19, 1985. At that time, they knew Levesque wanted to dissent. Levesque did not dissent at the end of last year or the year before or last February or last March or last May. He dissented in February 1985, and Mr. Pope knew it. He wrote a letter to all representatives of the three companies, saying there will be an FMA co-operative in Hearst. If one dissents, it will be a third party.

There was a letter later on confirming that was the way we were going to go on, and the negotiations continued after that. The same negotiations went on and went on until this year. Levesque did not dissent this year. He dissented before. Mr. Pope reiterated that is the way it was going to go, and then Mr. Harris did the same thing; all the negotiators since did not change their minds. That is the way it went.

So I do not know what you are talking about, that Levesque, Levesque, Levesque, Levesque. Levesque dissented a year and a half ago. He did not dissent today. He wrote a letter to the minister, to the Premier, to Mr. Grossman and to me. There is a reason that we do not know, and I will not say here the reason Levesque dissented. I am not here to judge him. There is some reason, and it is not the reason you are talking about. It is another reason, and I know, because I know Mr. Levesque. He is an old friend of mine; we have been going out with him since 1948. I went out with his sister and he is a friend of mine, but there is a reason he wants to dissent that you do not know.

Mr. Sterling: Mr. Chairman, I guess that is what concerns me most in terms of the whole issue. What are the motives involved in what is going on

here and why did you say, Mr. Fontaine, that if Hearst Management, which is Lecours and United, did not get the FMA, you would resign?

Mr. Fontaine: I said that because I had the FMA before I came here. Pope gave it to me. He gave it to the company of Hearst, and now because I am an MPP and a minister, the Hearst people cannot get that FMA. I had it before. It was a policy of your government and it was guaranteed that we have it. Pope said in the letter, if you decide, you will be an FMA co-operative and the one who dissents will be a third party. That was a guarantee from the crown, from the minister.

Mr. Sterling: Where does it say that in this--

Mr. Fontaine: Look at the letter from Pope.

Mr. Sterling: It does not say that in that letter, sir, not that I am aware of.

Mr. Fontaine: Look at the letter they wrote to every president of the three companies. If I recall, it was around February 13, something like that.

Mr. Sterling: Do you have that letter or a copy of that letter?

Mr. Fontaine: Each company has a letter. I am sure it is in your file.

Mr. Sterling: I do not have a copy of it that I saw last night.

Mr. Fontaine: Which copy? Have you got ours?

Mr. Sterling: I have a copy of the total MNR file and I do not see that in this particular file.

Mr. Fontaine: It is a letter that was sent to the company that the one that does not agree will be a third party.

Mr. Sterling: There is no approval of any FMA to Hearst Management prior--

Mr. Fontaine: I did not say it that way. I said I was discussing that with people before I resigned. I said, for the Hearst area to get an FMA now, I will have to resign. That is the way I put it out.

Mr. Sterling: Is that not what the Ontario Lumbermen's Association advised you before you took up the ministry?

Mr. Fontaine: What?

Mr. Sterling: That by taking on the Ministry of Northern Affairs you would put the Hearst management agreement in jeopardy

Mr. Fontaine: Nobody told me that.

Mr. Sterling: Nobody advised you of that?

Mr. Fontaine: I had resigned from the OMLA by then.



Mr. Sterling: The OLMA did not counsel you in that way?

Mr. Fontaine: No. When the directors of the OLMA told me I would have to resign from the executive, and I did, I was not a minister I was an MPP. I was a director of the OLMA at that time, but the OLMA has nothing to do with the Hearst area.

Mr. Sterling: Mr. Chairman, I have some further questions if you will give me a moment.

Mr. Fontaine, in the latter part of June or early in July after you resigned, the Premier (Mr. Peterson) said you would be returned to cabinet if you were re-elected. He later said, as reported in the Globe and Mail on July 8, that you were not assured a cabinet post. On July 15, 1986, you told Mr. Ganley of the Sun, "I'll be there, you'll see," about being back in cabinet.

Mr. Fontaine: Yes. I told the other newspaper, "If God wants it, I will be there." That is what I said to the other one.

Mr. Sterling: That is the only reason you said that?

Mr. Fontaine: I believe I am an honest man. I believe I am okay and I am going to be there if God wants it. He is the boss.

Mr. Sterling: On January 30, in response to a question in the House, the Premier said you had placed your shares in a blind trust with United Trust. Was he wrong?

Mr. Fontaine: Canada Trust.

Mr. Sterling: Which was a blind trust. We have not seen that particular document yet. Were you able to get a copy of the document?

Mr. Pratte: I do not think I was asked. No.

Mr. Sterling: Pardon?

Mr. Pratte: I do not think I was ever asked for a copy of the blind trust.

Mr. Sterling: Did Mr. Fontaine give us permission to ask for that?

Mr. Chairman: To my knowledge, I do not believe any member of the committee has ever asked for that specific document.

Mr. Sterling: Mr. Fontaine, do you have any objection to the committee's looking at the blind trust document you filed?

Mr. Fontaine: I would like to consult with my lawyers on this, please.

I thought that the clerk--we were told a day or two ago that somebody phoned, the clerk. I think the blind trust was filed with Blenus Wright too.

Mr. Chairman: There is a little bit of confusion in my mind, Mr. Sterling. What exactly are you asking for?

Mr. Sterling: Basically, I want to know when that blind trust was created and the terms of that particular blind trust.

Mr. Chairman: We do have in our files the information of when it was created and what is in there. I do not believe I recall seeing that document, but I am not quite sure what you are looking for here. Do you think there is some kind of a personal contract between Canada Trust and Mr. Fontaine that you would like to see?

Mr. Sterling: I do not know what the terms of the blind trust are.

Mr. Mancini: He obviously had the approval of Blenus Wright. As long as he met the guidelines, I do not know why we have to drag that out.

2:30 p.m.

Mr. Chairman: We would be prepared to try to determine whether such an agreement does exist and whether you have it or do not have it.

Mr. Fontaine, maybe you can help me with this. I am not aware that there is a document between you and Canada Trust which covers the terms and conditions of the blind. Is there such a document?

Mr. Pratte: Mr. Chairman--

Mr. Chairman: Why do you not let Mr. Fontaine answer whether there is or there is not?

Mr. Fontaine: I have a blind trust agreement.

Mr. Chairman: You have an agreement. Is there a piece of paper that is called an agreement to put matters into a blind trust?

Mr. Fontaine: Yes, because I signed my name.

Mr. Chairman: Such a document exists and you are prepared to let the committee see it?

Mr. Pratte: Absolutely.

Mr. Chairman: Fine.

Mr. Treleaven: Not only is it relevant, it is--

Mr. Chairman: Nobody is arguing whether it is relevant. We have just agreed you are going to get it. Do you want to pursue it further?

Mr. Treleaven: You asked whether it was relevant. It can be a blind trust or a frozen blind trust with various other terms--

Mr. Chairman: He has just agreed to provide you with the document.

Mr. Treleaven: Fine. Thank you.

Mr. Chairman: Even when you win you do not give up, do you?

Mr. Sterling: Mr. O'Connor has some questions as well.



Mr. Chairman: Are there any other members who want to ask questions?

Mr. O'Connor: I have just one area that has been bothering me and I touched on it yesterday. It goes back to your statement, Mr. Fontaine, as to the date upon which you received the form to complete from Mary Eberts. You had indicated in the statement that it was July 24, 1986. We have corrected that. It was July 24, 1985, which would have been about a month after you had become the minister of mines. I want to refer you to--

Mr. Fontaine: I had a meeting with her before that.

Mr. O'Connor: That is what I am getting at.

Perhaps I can go on and I can assist with some of the dates to help you remember. I have the Hansard transcripts of the committee hearings before the standing committee on public accounts when Ms. Eberts appeared and gave testimony and evidence in this regard. I refer specifically to her evidence given on July 2, 1986 at page 2050, where she says:

"As part of the exercise that I did with members of the caucus, we had them fill out those forms." I am skipping some. "This set of materials was distributed to members of the caucus at a time when Mr. Peterson was considering whom he should put in the cabinet. On the basis of those forms, I was in a position to say whether there were any problems with any particular person in a particular ministry because of landholdings or whatever."

She seems to be saying that these forms were distributed to you prior to your being appointed to the cabinet. That is some time in June and not July. Does that help with your recollection of when you might have got the form and when you filled it in?

Mr. Fontaine: I said in my statement that I had an appointment made in late June. I do not know the date exactly. I asked my personal accountant from Kapuskasing to attend the meeting with me, which he did. During that meeting, I was asked by Ms. Eberts a number of questions, including questions about my assets. I gave everything on this, my assets, and she noted them there. She then provided me with a copy of the disclosure and a form which I guess she or they prepared together. Then I received it back at my office on July 24.

Mr. O'Connor: You did receive the form prior to being put in the cabinet and filled it in prior to that?

Mr. Fontaine: We were working on it. It came back typed and everything and a copy to me. Maybe it was on the 10th or the 11th, but I received it.

Mr. O'Connor: Thank you. Those are my questions in that area.

Mr. Treleaven: I have Hansard of January 30, 1986. During question period the member for Don Mills (Mr. Timbrell) was questioning the Premier about the Hearst Forest Management agreement and United Sawmill. At page 3622, the Premier said:

"Last May, we asked the various potential cabinet ministers to submit their particular situations, which they did; they were all checked by lawyers."

Would it be May or June? Mr. O'Connor just asked you about June and you said it was June. The Premier must be wrong when he says May?

Mr. Fontaine: First, I did not know; he never asked me to be a minister before we took over.

Mr. Treleaven: No. He says: "Last May, we asked the various potential cabinet ministers...."

Mr. Fontaine: Last May, I do not know if I was even here at that time. I was elected on the fourth or fifth and I came over here to get sworn in later on.

Mr. Treleaven: It says, "...which they did; they were all checked by lawyers."

Mr. Fontaine: It must be late June. I know he did not ask me before I was elected.

Mr. Treleaven: Can you help me with this? You said early this morning that you had two discussions only regarding conflict-of-interest matters and forest management; two discussions with Mary Eberts and one with the Attorney General (Mr. Scott).

In the same Hansard, the same question, the Premier said about getting various potential forest management agreements and getting details; that they were all checked by lawyers. He later says: "On legal advice from Mr. Wright, who is the repository of all these things, this was the relationship established." He was talking about blind trusts.

I just want to confirm, am I correct that you said this morning you do not know Blenus Wright?

Mr. Fontaine: No. All the facts are put in. It is all there. It was in a blind trust.

Mr. Treleaven: I do not want to sound as though I am badgering, but I am having trouble. The Premier also said that day, "I was aware last May that there was a problem." This was with regard to the blind trust. "The minister absolutely did not participate in it. On legal advice from Mr. Wright, who is the repository of all these things, this was the relationship established."

Then in return to the question, "What did you do?" he said, "Exactly what we did do. I was aware last--after the election; I was aware last May that there was a problem." Then there were other words, sort of an accusation by Mr. Timbrell to the Premier, and his answer was: "Of course I acted. Immediately, everything was put into a blind trust. He conformed"--meaning Mr. Fontaine--"to all the legal niceties. He has had nothing to do with the company."

Can you help me out about a blind trust being put in immediately after May 1985? Can you help me out with the Premier's dates?

Mr. Fontaine: If I am right, it was in June, late June, that I met Ms. Eberts with my accountant and we started to work at it. That is the time for me. I cannot help you any more.



Mr. Villeneuve: Préférez-vous que l'on vous pose les questions en français ou en anglais?

M. Fontaine: En français.

M. Villeneuve: Je vais parler français.

Premièrement, votre déclaration d'hier et je ne crois pas que nous mettions en question la sincérité, l'honnêteté. Nous sommes tous deux d'expression française. Je viens de l'Est de l'Ontario et vous venez du Nord. Par contre, quand vous êtes impliqués dans nombre de choses comme cela, que vous ne tenez aucun dossier, que vous faites des contrats sans signer, continuellement?

M. Fontaine: M. Villeneuve, c'est comme ça que j'ai été élevé par mon père. La famille Fontaine, on a tout le temps fait nos affaires comme ça. La semaine passée, il y a un homme de 97 ans qui a parlé et qui a dit qu'il volait du foin à mon grand-père et mon grand-père le soupçonnait mais il lui faisait le prix en arrivant et c'était comme ça. C'est comme ça que je travaille dans la vie. Dans mes affaires personnelles, je parle de ma compagnie, j'avais des gérants mais personnellement, je fais confiance à tout le monde. Je le dis encore, sincèrement.

M. Villeneuve: Mais ce n'est pas seulement de petit foin dont on parle; on parle de foin qui est assez considérable.

M. Fontaine: Moi, je vais te le dire. Ceux qui me connaissent, René Fontaine, l'argent ça ne me dit rien, Monsieur. Ceux qui me connaissent à Hearst, dans mon comté, c'est comme ça qu'ils me prennent. René Fontaine, l'argent ne lui dit rien. J'ai été chanceux que le Bon Dieu m'ait donné la chance d'avoir plus d'argent, peut-être à un moment donné, bien plus que ce que j'ai aujourd'hui et que j'ai pu me construire une pas pire maison. Mais c'est tout. J'ai une petite voiture, pas une Cadillac. C'est comme ça que j'ai été élevé. L'argent ne me dit rien et si ma femme pouvait vous en parler, elle vous dirait la même chose.

M. Villeneuve: J'accepte certainement ça. Vous souvenez-vous combien les 17,122 actions ici vous ont coûté?

M. Fontaine: 36 cents environ.

M. Villeneuve: Environ 36 cents au moment de l'acquisition?

M. Fontaine: Non, ça se sont les actions entières?

M. Villeneuve: Oui.

M. Fontaine: Hier, j'ai expliqué que les actions entières viennent de l'argent que j'avais mis dans le syndicat, autour de \$9,000. J'ai des reçus pour \$9,000. Peut-être que j'en ai donné plus, mais moi je compte \$9,000. Si tu figures ça, ça revient à peu près à 36 cents l'action.

M. Villeneuve: Alors \$9,000 vous a acquis 17,120 ou 160 --

M. Fontaine: Une partie.

2:40 p.m.

M. Villeneuve: Pour revenir au fameux contrat de gestion forestière, vous avez suggéré que si j'étais pour demander un contrat de gestion forestière, comme je ne connais rien dans la forêt, que je n'appartiens à aucune usine de bois, alors mes chances de succès sont à peu près nulles. Un contrat de gestion forestière pour Villeneuve ne vaut rien.

Un contrat de gestion forestière pour une compagnie comme Hearst Forest Management Incorporée qui incorpore l'expérience de Fontaine Lumber Timber Co., Polar Lumber Co., Fontaine Lumber C. Ltd, F. & G. Fontaine et Joanis, Deep Forest, Mooseland, United Sawmill; cette expérience-là, toutes ces compagnies qui sont englobées dans une, ça doit avoir une certaine valeur?

M. Fontaine: Dans le langage de moulin à scie, la valeur est dans la ferraille parce que la forêt appartient à la province, aux payeurs de taxes de la province. Tu ne peux pas vendre le bois. Le bois appartient à vous autres, les payeurs de taxes. Ce que tu peux vendre, c'est ton moulin à scie, ta ferraille puis peut-être certains camps ou garages dans le bois.

Alors la valeur d'un moulin à scie dépend de ce que le gouvernement dit au moment où tu veux vendre. Il faut que la continuité se fasse. Si tu vends ton affaire, comme toi tu m'achètes puis tu fermes le moulin à scie, tu ne les auras pas les concessions de bois. Il faut continuer.

Il faut que tu te rappelles que ce n'est pas d'aujourd'hui qu'on en est là. On est arrivé en 1922. On a souffert. Mon père n'est pas mort à 90 ans, il est mort à 56 ans parce que dans ce temps-là, dans le Nord de l'Ontario, tu ne mangeais que du "baloné" et des oeufs. Il y en avait des oeufs. Tu restais dans un camp de bûcherons, dans les camps de bois rond. On n'a pas été élevé dans une ville; j'ai été élevé sur le bord d'un lac, dans une maison où jusqu'à l'âge de six ans, on était dans une maison de bois rond. Alors, on a souffert et ce que les gars de Hearst ont gagné, ils l'ont gagné à la sueur de leur front. Il n'y a pas eu de donations dans ça.

M. Villeneuve: D'accord, mais c'est la raison pour laquelle j'ai listé toutes vos compagnies au préalable.

M. Fontaine: Puis il y a des compagnies qui ne sont pas à moi dans celles que tu as listées.

M. Villeneuve: La famille Fontaine était impliquée. Votre expérience et puis le "cash flow" (liquidité) que les contrats de gestion forestière vont vous garantir doivent vous rapporter une certaine valeur?

M. Fontaine: Comme je vous l'ai dit ce matin, la valeur que ça rapporte, ça donne une assurance aux trois parties: la compagnie, l'employé et la ville de Hearst, le monde qui travaille, la région, le syndicat. Ça leur donne une assurance que si la forêt est gérée comme il le faut, il va y avoir une continuité. Mais si la forêt n'est pas gérée comme il le faut, il n'y aura pas de continuité.

M. Villeneuve: Alors pour une compagnie de gestion comme Hearst Forest Management Incorporée, je crois que vous venez d'admettre qu'il y a certaine valeur, si vous pouvez garder 5, 8 ou 10 pour cent du "cash flow" qui passe --



M. Fontaine: Non. Là, M. Villeneuve, tu ne peux pas figurer que le "cash flow" d'une forêt -- Une forêt de bois, avant que tu commences à bûcher le bois puis à le charrier. Après ça, il faut que tu le scies. Puis si tu ne fais pas attention comment tu le scies, et bien tu n'en as pas de profits.

Le profit n'est pas seulement du fait de bûcher du bois pendant des millénaires. Ce n'est qu'une partie ça. Là, tu prends ton billot puis tu le scies. Et si tu fais trop de "chips" et bien tu es dans le trou. Le profit d'un moulin à scie n'a rien à voir avec le gouvernement, la forêt. Ca va avec la manière que tu opères, efficacement.

Tu peux avoir du bois gros comme ça, puis le gars qui a du petit bois comme ça, s'il opère efficacement, il peut faire plus d'argent que le gars qui a du gros bois. Puis moi, je veux te dire quelque chose aujourd'hui. Si on continue à parler de ça, tout à l'heure on peut nuire à la province de l'Ontario, parce que tu sais que de l'autre bord, il y a une bataille qui se fait. Puis ils nous disent qu'on a déjà trop de subsides qui ont été donnés à nos compagnies forestières. Puis tu sais qu'on appelle ça le "controlling duty" qui se passe de l'autre bord. Et ce matin, on répète que c'est des ci, des ça pour les compagnies, mais si on continue et bien, il n'y en aura plus de moulins à scie parce que les Américains vont dire: "ha! on vous l'avait dit qu'il y a trop d'argent qui va dans les compagnies".

M. Villeneuve: Alors vous avez peut-être vos raisons. Laissons ça de côté pour le moment. Timber rights: les droits de coupe? Est-ce qu'ils vous obligent à faire la plantation de nouvelles pousses où est-ce que vous ne faites que couper le bois? Vous laissez la relève normale qui suivrait sans plantation?

M. Fontaine: Jusqu'à aujourd'hui, jusqu'à maintenant, s'il n'y avait pas de FMA, la plantation est faite par le gouvernement. Nous, jusqu'à aujourd'hui et même encore aujourd'hui, on paye une coupe de bois et le gouvernement s'occupe du reste.

Et même à certaines occasions, ils ont construit des routes qu'ils appellent des routes de ressources, construites à leurs frais et ils chargent un certain pourcentage aux compagnies. Ils ont construit des routes un peu partout, pour n'importe qui, dans le Nord Ouest, dans le Nord Est. Aujourd'hui, lorsqu'ils ont introduit le FMA, c'était pour transférer toute cette gérance de forêt-là au niveau de la région et des compagnies. Ils veulent éliminer ça. Avant c'était fait par eux, jusqu'à aujourd'hui, chez nous, à Hearst

M. Villeneuve: Supposons que les FMA n'existaient pas. Le gouvernement ne serait pas dans le renouvellement des terrains qui ont été coupés.

M. Fontaine: Non, si le FMA n'existait pas, c'est le gouvernement qui en ferait une partie, mais il n'allait pas assez vite.

Je te rappelle la bataille en Chambre qui était parrainée par les Néo-Démocrates et d'autres personnes, qui ont dit que les forêts dans le Nord sont après disparaître. Il y a eu l'étude qui a été faite par Peat Marwick, l'étude qui a été faite par l'ancien député-ministre fédéral--

Mr. Laughren: That was Les Reed.

Mr. Fontaine: Les Reed, saying exactly that if we do not wake up there will no more sawmills in Ontario and then the pulp mills will be suffering too. They then started on a new course and they came up with the FMA. They were not planting trees or carrying on reforestation as fast as they should. There still are complaints, as you heard Mr. Martel say today, that we are not doing enough right now either.

Mr. Villeneuve: Therefore, the FMAs have a great incentive. There is a great incentive for forest companies in the north, with or without value--I will use your terms--to attempt to make these long-term contracts that effectively go into perpetuity.

M. Fontaine: Mais, il faut te rappeler qu'avant les FMA, ce qui se passait -- mon grand-père est arrivé en 1922 et on est rendu en 1986, c'est presque perpétuel.

Les permis qu'on avait avant et qui existent aujourd'hui, c'est la même chose. Si tu fais ton ouvrage comme il faut, ça s'appelle la plantation. Mais si tu ne voles pas le gouvernement, si tu ne fais pas d'"over patting" et que tu ne voles pas de bois qui n'est pas mesuré, ton permis va continuer et continuer, en autant que tu donnes du travail au monde.

Le FMA, ça sert, d'après ce que je peux voir, d'après ce qu'ils ont fait avec les pâtes et papier, ça donne le "owners", ça transfère la gérance aux compagnies et le gouvernement leur donne de l'argent pour faire ça. Mais l'argent est distribué pour planter des arbres et construire des routes. L'argent ne reste pas dans les poches du propriétaire.

Ce que tu as vu dans la lettre ce matin, que ça coûte aux compagnies de Hearst s'ils vont pour les FMA, \$368,000 ou \$378,000. Ce que je disais ce matin, avant ils payaient la taxe sur le terrain, seulement sur la partie qu'il y a ici, ce qui était le permis de cinq ans.

Dans ce territoire que tu vois sur le mur, ce ne sont pas toutes des "townships" qui contiennent du bois. Il y a au moins la moitié peut-être qui a été coupé dans les années 20 et les années 40, 50, 60, 70. Ils sont en train de faire une retransplantation dedans et ils nous la donnent à nous pour la gérer. Ce que tu vois là, ce n'est pas tout du bois prêt à couper tout de suite. Il y a du bois là-dedans qui sera coupé dans 100 ans. Parce que dans le Nord, ça prend à un arbre pour être prêt à couper, 100 ans. Pour les pâtes et papier, ça prend 60 à 65 ans. Pour obtenir cette grosseur-là, dans le Nord de l'Ontario, ça peut prendre 100 ans.

M. Villeneuve: Pour les compagnies United Sawmill ou Hearst Forest Management, si elles n'obtiennent pas leur contrat de gestion forestière, est-ce qu'elles vont pouvoir survivre financièrement ou est-ce que ça va être très difficile de continuer?

2:50 p.m.

M. Fontaine: La seule raison, on va continuer comme c'est là. On va vivre pareil. Mais l'argument que je donne, c'est une politique qui a été commencée avant, c'est une politique poussée par la Chambre, par les députés de l'Opposition et du gouvernement et ils ont décidé que c'est comme ça qu'on devrait aller. C'est pour rassurer tout le monde que tous les cinq ans, il y aura continuité. Je suis certain qu'avant, le monde disait: Il va manquer de bois. Je savais qu'on n'en manquerait pas. Donc je me suis dit: "On va



continuer, parce que le gouvernement veut que la ville marche. Mais vu que ça s'applique à tout le monde, c'est une politique du gouvernement... Pourquoi que Mallette en a eu une lui? Pourquoi que Dubreuil en a eu une? Pourquoi que Chapleau va en avoir une? Pourquoi M. Buchanan va en avoir une, pourquoi M. (inaudible), et qu'eux n'en auraient pas? Ça fait partie du programme de cette région-là. C'est là qu'il y a plus de misère à la régénération. C'est dans ce coin-là qu'ils en ont manqué le plus. Si l'ancien gouvernement... Une des régions qui a manqué dans la régénération, c'est la région de Hearst. Puis la région de Hearst, c'est à 100 milles de là. Avant la guerre, il y a eu des compagnies américaines qui ont bûché là et qui n'ont pas replanté. Il y a eu des compagnies de France qui n'ont pas replanté.

M. Villeneuve: Avec ou sans valeur, Monsieur Fontaine, le contrat de gestion forestière était assez important pour que vous disiez à Monsieur Peterson que vous ne vous présenteriez pas si vous l'aviez...

M. Fontaine: Ce n'est pas comme ça que je l'ai dit. J'ai dit à ce journaliste-là que j'avais discuté, il y a quelques années-- Mais ne me dis pas qu'il va falloir que je me retire. Ça ne me fait rien que la compagnie Fontaine s'en aille; j'ai 52 ans. Je n'ai qu'un garçon qui travaille là, puis il n'a seulement pas le droit d'assister à l'Assemblée à cause de mon "blind trust" (féducie sans droit de regard). Je regarde la région de Hearst qui a besoin de ça pour survivre. Ce sont des emplois. Ils te donnent tout le temps des ordres. Ce sont des contrats avec lesquels tu engages des jeunes de la région pour planter. En ce moment, on n'en prend quasiment pas. On n'en prend qu'un petit pourcentage. En plus t'engages du monde de la région. C'est pour créer de l'ouvrage dans la région, pour que la région ait une chance de dire: "au moins il y a du bois pour 100 ans", comme les autres. Puis moi, je figure que la région de Hearst a le droit de vivre autant que les autres. C'est ça mon argument. Je peux le redire et je vais le redire toute ma vie.

M. Villeneuve: Mais sous un contrat de gestion forestière, des chemins seraient établis par les fonds gouvernementaux...

M. Fontaine: C'est négocié, d'après ce que j'ai entendu dire. Moi, j'ai su ça des gars des pâtes et papier. Apparemment, il faut que tu ailles là et que tu négocies ton chemin et aussi pour savoir quelle sorte de chemin. Ce sont eux qui décident, depuis plusieurs années quelle sorte de chemin tu vas prendre et quel argent. Au commencement, il y a eu des abus. Si tu regardes en arrière, au cours des quatre premières années, il y a presque eu un manque d'argent. Puis maintenant, on a de la misère à trouver de l'argent pour tout payer ça parce qu'ils ont donné trop en partant. Il y a trop de monde qui n'a pas utilisé l'argent pour des chemins.

They used too much on the secondary roads, and I argued that already with some of the ministers in a public meeting that there was too much money put into the secondary roads because it is an abuse. Otherwise, if they put all the money on the roads, there would be no money left to do the rest of those forest management agreements.

M. Villeneuve: Et puis je reviens à la campagne électorale, avant l'élection du 2 mai 85. Le Ontario Lumbermen's Association ne vous a jamais prévenu d'une situation où, si vous étiez élu et puis deveniez ministre, que le contrat de gestion forestière serait en danger d'être enlevé?

M. Fontaine: Il n'y a personne qui m'a dit ça. Je crois et je le dis encore: lorsqu'une personne a mis ses affaires dans un "blind trust" et à qui on dit que les gens vont souffrir à cause de ça, eh bien il y a quelque chose qui manque dans le système, Monsieur. Il y a quelque chose qui ne marche pas. On devrait peut-être tous aller se faire examiner la tête.

Mr. Laughren: Mr. Fontaine, I think what is bothering some of us--at least it is bothering me--is if some of us feel that there is a substantial benefit to holders of FMAs, companies that have signed the FMAs, if there is a substantial advantage to companies with FMAs, then what you are quoted as saying does raise concerns because it appears that you were really playing hard ball with the Premier on the FMAs.

The previous government was going to proceed with them; it is clear in the correspondence that is the direction in which it was heading. It is also the direction in which the new government was headed. I am not questioning that at all. I do not think that because the government changed Hearst was going to get a forest management agreement. I do not believe that. What is bothering us is the propriety or whether it was proper for you to be making public statements that the FMA had better be signed or you would resign. That is what is bothering me.

Mr. Fontaine: Mr. Laughren, I did not say it that way. I said I was blamed, I was accused on three occasions by the opposition in the House, and in a letter Mr. Grossman sent to all his Conservative friends. I saw that, and at the bottom of that there was another one saying that we stopped the spraying of the forests. Then the research paper that came from the researcher of the Progressive Conservatives was marked "Runciman FMA."

What I was saying was, "Do not tell me." I told that to a friend. I told that to the newspaper and you put it that way. "Do not tell me. I will have to resign for Hearst to get an FMA because that is the only way." We had it before. It was there. Now that those people were accusing all the time, and I knew from one of my sources that the week after the mining thing, the FMA was coming back in the House. I knew that. I had some telephone calls; I knew that.

Then when I resigned--I had not resigned at the time I said that--I told the newspaper, "Today was the mining and the next one was the FMA." I was told on the telephone by somebody. He was at a party and a Conservative friend told him, "Fontaine, we got him on the mining and we are going to get him on the FMA." I knew that and you knew that and lots of people in the House knew that too. I am not the only one.

Then I said: "Maybe it is time that we settle all this. Clear the air on the FMA." That is what I said, "Clear the air." Nettoyer l'air. He did not put that down.

I said again, in French, "I do not see why a region, when it was decided by the policy of any government, why a region should suffer because somebody at one time is an MPP or minister, when everything is done according to the law." As you know, an FMA for the Hearst area--you visited that area; that is where the reforestation is at the worst stage probably. If you read all the reports, it is awful. I do not see why we should be put off on account of that. That is my feeling over here, and when I said that I was not putting pressure on anybody. I was a guy on the street.



Mr. Laughren: Mr. Fontaine, I happen to agree with you that the Hearst area should have an FMA. I agree with that. I agree that there are benefits to the community for an FMA and to the province as a whole, but I also think more than you do that there is a substantial benefit to the companies that sign the FMA. That is where you and I have different opinions. We can debate that for ever, I guess.

Mr. Fontaine: No. No, Floyd, on this one, I take it we have to wait. I did not read the report of the previous five years of the FMA. I think it is to see if there is a big profit or not. We have to let the FMA go one or two years to see what kind of terrain we are affecting.

A pulp and paper company told me at a meeting that we had in Thunder Bay, that it broke even on the road, but it lost its shirt on something else. I think we have got to operate it to see if that much money--as you said in the House to the government a few times I listened to you, "You should watch more about the spending"--am I right?--"and save there to put the money into reforestation." I agree with you on this.

Mr. Laughren: As a matter of fact, I think there should be a complete audit done of all the road expenditures under the previous government. That is what I think, but that is not your problem, and that is not what we are here to debate today, but that is what I would do.

Mr. Mancini: It is a nice point.

3 p.m.

Mr. Laughren: It is a nice point and I know you think it is relevant.

Mr. Laughren: Let me put a question to you that is perhaps a little strange. If you were to turn back the clock, would you say anything about the forest management agreement for Hearst at all?

Mr. Fontaine: You say many things when you are under pressure. If you recall, I said other things too.

Mr. Chairman: That is not relevant either.

Mr. Fontaine: No. Sometimes you feel sorry, but like everything else, you try to do your best and then sometimes you talk too much.

Mr. Mancini: Good answer.

Mr. Laughren: I think you have answered my question.

Mr. Chairman: Are there any other questions?

Mr. Sterling: Mr. Fontaine, the guidelines are specific in some cases and a lot of the clauses of the guidelines are specific as to what is required of the minister. The last paragraph of the guidelines says, "These guidelines are not exhaustive, nor could they, in reality, embrace all possible situations representing or suggesting a conflict of interest."

Mr. Brandt has put forward a number of suggested conflicts of interest in his statement in front of this committee. We have talked about the fact that you owned United Sawmill shares until December 1985 for a five- or a

six-month period when you had every right to vote on those shares and to do everything else a shareholder could do. You could have participated in the management. You could have participated in the forest management agreement meetings. As a matter of right, you remained as a director of the forest management agreement company, Hearst Forest Management Inc.

Do you feel the perception of the public is important in dealing with these particular matters. I mean we are dealing with perception of the public as to how cabinet ministers in the Ontario government conduct their affairs when we are given the privilege of serving on the executive council. Do you feel these breaches were--if you refer to them as breaches--substantial, or do you consider them minor or technical as the Premier has stated?

Mr. Fontaine: Personally, I followed what my adviser told me and then at the end I put everything in the blind trust. In my life and the way I live--I will say that in French.

Ce qui compte pour moi, ce n'est pas de paraître, ce qui paraît. C'est ce qu'il y a en dedans de l'être. That is my philosophy. Moi, que le gars soit mal habillé ou qu'il soit beau ou laid, pour moi c'est un être. Puis pour moi de paraître, je n'ai jamais été trop pour ça. Je n'ai jamais agi comme ça. Souvent le monde me disait de faire plus attention à la manière dont je m'habillais lorsque j'étais maire. Je m'habillais en bûcheron et parfois, il y avait du monde qui trouvait que je prenais un coup trop fort, when I was drinking and I should watch myself because sometimes I was falling down the steps of the Waverley Hotel and I thought: "Hey, Fontaine, do not do that. You are not supposed to drink like that." but still I paid the price. I suffered and then I stopped.

Moi, paraître, the appearance for me, it is not that. What counts is the inside of me or somebody. I trust people. I gave everything and I said, "Do that" to my adviser and then I did my best. Maybe I caused some--how do you say that? des remous--but I did not do that because I wanted to. I should probably have watched my affairs better. You are right, but in my own mind I did not do anything to benefit anybody. I tried my best as a human being to work for this province.

As you know, Norm, I left a family and a big business, as you just said a few minutes ago. I did not come here to try to do things wrong because I could have done that sitting in Hearst. I did not come here to gain, because I had it all there. The way you are talking is like I was going to lose it. Like anybody else, I came here as a little Frenchman from northern Ontario, to try to do my best not only for the people of this area but also for the people who are suffering in the north, the youth and everyone, to get them all those things. It was hard to accept for my children and my wife. She came close to a depression on account of this, but still I will be back and I will fight stronger in a year. I am sorry if I caused all this. I tried. People were advising me and I did what they told me. If you tell me, "You should not have done it this way," it is past.

Mr. Sterling: Mr. Fontaine, I do not argue with your intentions or your background or whatever. My background is not much different from yours in terms of what I gave up in financial or whatever terms to become a member of this provincial Legislature. I do not deny that at all, but when you are a minister of mines and you have shares in a company that is receiving direct benefits from you, under your own ministry, do you not believe the perception the public must have of you and of your government is important? I know how you feel personally, because I do not feel I am like that, but is the public perception not important?



Mr. Fontaine: It all depends who looks at it and judges you. I have put all the facts out. I am saying to you I followed what I was told and I put my confidence in people to work at this. They said, "I am going to take care of that." I went this way and they went that way and it did not all come forward at the right time. As I said, I should probably have pushed them harder, as I sometimes pushed people in the ministry, but last summer I left and I went all over the place.

I did not have any assistance until late in the fall. They changed the deputy minister in August. I had no parliamentary assistant and only a young secretary who came from North Bay. She arrived only at the end of July. I had a young man from London working for me for a while. I was alone. Then my friend André Gagné told me: "I am going to help you. I am going to take care of that." He was the one who was supposed to discuss this with Mary Eberts and do all this. I did the best I could under the circumstances. I should probably have supervised the matter more closely. I accept full responsibility in the end. I must take the blame and I do.

Mr. Sterling: The problem is that the Premier has stated this is a technical violation. What I am concerned about is, is the government serious about conflict-of-interest guidelines? Are you serious about whether the appearance of what has happened in the past is serious? That is the real question this committee has to decide. The technical violations are there and we have to decide whether this is a matter of substance and whether this government gives a darn for the conflict-of-interest guidelines. This is the issue we are dealing with. I want to know whether, looking back in retrospect, you consider the conduct, intentional or unintentional, was a serious breach.

3:10 p.m.

Mr. Fontaine: With what I lived through, if I were starting over again, I would do it differently for sure. As you know, we were not there for 42 years. We were all rookies; except for a few who had sat for 10 years, all the rest were new. I say again, I did what I was advised to and I repeat that maybe I could have approached the people more, but what is done is done. I am taking full responsibility. I cannot undo what was said yesterday and what was done.

Mr. Sterling: I do not doubt your sincerity, but I ask you once again, in retrospect, do you consider these matters as a technicality or as serious matters of problems in dealing with the whole matter of being a minister and the appearance of being in conflict?

Mr. Fontaine: Myself, again, I said I followed what I was told and it is up to you to judge me.

Mr. Chairman: Would anybody get upset if the chair put a question or two?

Mr. Treleaven: As long as they are short, to the point and not fishing.

Mr. Chairman: I always like a little abuse. It helps me.

Mr. Fontaine, we all come here from different backgrounds and we do things in different ways. We meet strange and really weird rules. One of them is that when you are a minister, whether you know who these people are or not, whether you are there or not, you are responsible for everything everybody in your ministry does. Do you accept that idea?

Mr. Fontaine: Yes.

Mr. Chairman: You said on a number of occasions that you did break these guidelines. There are a variety of ways--some not too serious; some may appear to some of us to be a little more serious--and you said you accept responsibility for that. Could you help us a little bit? What I find hard--and I have listened to questions from all over here--is to get an assessment of whether you yourself think this is an important thing. The trust, the conflict guidelines and all the traditions; is that important to you?

Mr. Fontaine: It is important because you are here in this atmosphere. I guess that is why they have guidelines. But if you live the right way, you do not need guidelines either. If you live as you are supposed to, if you are a good Christian, you do not need guidelines. It is because people are afraid that somebody is going to go astray that they have guidelines. That is my feeling. I guess that is the life over here.

Mr. Chairman: Yes. It is kind of like that. It is all unfair in some ways. However, most of us who are your peers have accepted that if you want to be part of this parliamentary process, you have to accept all its traditions, weird though they may be. Even if you do not think this is an important thing, the guidelines for conflict of interest are important. They are in place because the people in Ontario said: "He may be a nice man, he may have really good intentions, but for our sake, nine million of us, people who become ministers of the crown have to follow these silly guidelines. They have to file all these stupid pieces of paper. They have to do things in this way." Do you accept that concept?

Mr. Fontaine: Yes.

Mr. Chairman: You live by a whole set of rules that are not your own, that you are not free to accept or reject.

Mr. Fontaine: I accept that, but before it was not explained in too much detail. I take the blame for not having looked into it deeper. As I said in my statement, some adviser maybe did not think it was serious that way too, because he did not say, "Fontaine, do not that." I accept that. I accept the blame. I accept the rules too. As I say, it is part of why we are here. Maybe we do not play that game north of the French River, but here that is the game.

Mr. O'Connor: Following briefly from the chairman's questions, you have made much over the past two days of your sincerity and explained to us in great detail about your attitude on these types of things. I have had some concerns from the outset and I have been trying to judge--I have sat here quietly today, not asking too many questions--that attitude and that sincerity. That is part of the deliberation we have to undergo.

I read, with some distress, I might say, a report in the Toronto Star a couple of weeks ago when reporter Sandro Contenta reported you as saying, "Fontaine, the former mayor of Hearst, makes it clear that he places no importance on the findings of the all-party committee investigating the conflict allegations." Did you say that and is that how you feel?

Mr. Fontaine: I will tell you this, you would feel like that too. To go back to when I arrived here Tuesday, then I did not judge and I accepted what Mr. Brandt was saying, but still he was here and I am not arguing with that. Still, he cannot be a witness, an interrogator and a judge, and he was one in the House. At that point I felt a little bit--that is what I was meaning. It was hard for me to accept.



Today I looked at you and believed you, but sometimes the guy who did everything against you is over there. How would you feel? That is what I was meaning, I think, when I talked, and I still feel like that a little bit sometimes. Yesterday he asked me a question seven or eight different ways, and you have your own way of thinking. For a rookie like me, when we come over here and I am going to be judged by people on the other side, it is hard. I am sure if you were sitting here you would say the same thing. It is in that context that it was hard for me to understand. You could be hanged, you are finished as a politician. You are destroying my family, destroying my life and you are doing that for political reasons.

I look at television too. I look at what was said in the House. I look at it now, and that is one reason I took that way back home because there are some--they are not here today because I thought I was going to be in front of another committee; I did not know I was going to be in front of this committee. In the other committee I was supposed to come to, some people have made some statements. I said, "How can I be judged by somebody who made some statement and did not know all the facts?" Later I received a letter, not too long ago, a few days ago before I arrived, from Mr. Breaugh saying that I was appearing in front of this committee. Now it is your job to judge me, but it is hard to accept sometimes that you are going to lose everything, because I think you have to leave politics aside and look at things honestly. Thank you.

Mr. Chairman: Mr. Fontaine, we thank you for coming in; we may be back to you. We have a tough job to do and we will try to do it as fairly and as best we can. Thank you.

Mr. Fontaine: Thank you.

Mr. Chairman: Did I hear a call for a recess until 3:30?

The committee recessed at 3:20 p.m.

3:33 p.m.

Mr. Chairman: Are we ready to get back to business? I point out that the simultaneous interpretation people have been allowed to leave for the day, having put in a very full day's work.

Mr. Sterling: Pardon?

Mr. Martel: Can we leave until tomorrow morning?

Mr. Chairman: The next order of business in the committee is the motion placed before you yesterday by Mr. O'Connor.

Mr. Laughren: Let us deal with that now.

Mr. Chairman: The ruling of the chair, and it was upheld, is that the next order of business will be this motion.

Mr. O'Connor: I will not belabour the point. I simply refer to my comments on two previous occasions, on July 9 and on Monday or Tuesday of this week, as eminently reasonable reasons for requesting outside counsel. I will not reiterate those reasons but simply refer members to transcripts of Hansard in that regard.

Mr. Laughren: Very briefly, do I gather from Mr. O'Connor's remarks that he wants to let the motion stand? I wonder why? Mr. Fontaine has been here. We have heard his testimony. We have all had ample chance to ask him questions and hear his answers. I do not know why the motion even is relevant any more.

Mr. Treleaven: Floyd, you have to be kidding.

Mr. Laughren: I did not think I was.

Mr. Mancini: Come on.

Mr. Treleaven: We have spent two days here; if we had had counsel at the beginning, we probably would have been two hours eliciting the information it has taken us two days to do.

Mr. Laughren: What solicitor would ever have restricted himself to two hours?

Mr. Martel: I listened to you and your solicitor.

Mr. Treleaven: The Oxford solicitors.

Mr. Laughren: They get paid by the hour in Oxford county too.

Mr. Treleaven: They are good country boys.

Mr. Laughren: The meter is always ticking.

Mr. Treleaven: You have been dealing with the wrong lawyers, Floyd.

Mr. Martel: Did you learn that this morning?

Mr. Treleaven: It is obvious that we would have saved time. With the plethora of information we have in front of us, an additional counsel should be here to assist us. We should have had one in the beginning. We are not yet discussing witnesses, but I hope there will be a number of witnesses coming in front of us. We will need outside counsel for that.

Mr. Mancini: To do what?

Mr. Sterling: I suggest you stand this down until we decide the order of business of what we are going to do.

Mr. Chairman: I would like to be able to do that, but I made a ruling that this would be the next order of business. That ruling was upheld so I am not at liberty to change it.

Mr. Martel: Could I move that we table it until we decide where we are going?

Mr. Chairman: A motion to table is in order and it is not debatable.

Mr. O'Connor: Perhaps there is some sense in that, Mr. Chairman, until we decide how many witnesses we want to call. If it is a relatively large, cumbersome number or the balance of the evidence we think we need is extensive, I would want the motion to be kept alive. If, however, it is a very small number of witnesses, perhaps I would withdraw it but, in the meantime, why do we not stand it down?



Mr. Chairman: Do I see unanimous agreement that it be stood down? I see a variety of finger-shaking and head-shaking. I am at your pleasure, then. You may recall that when we accepted the recommendations by motion of the steering committee we said we would hear Mr. Brandt to put the question, we would hear Mr. Fontaine, and when those two events had occurred we would then order our business for the remainder of the hearing.

It was put to you that it was conceivable at that time, and it may still be, that you may have heard the facts as you think you want to hear them or as they ought to be heard, and you would be in a position to make a decision, or you may decide there are other witnesses you want to hear and other documents you want to see. We have attempted to keep track of those.

I would point out to you that during this afternoon's hearings the agreement to set up the blind trust was asked for. Mr. Fontaine's counsel has agreed to provide us with that. We have not received that yet. I think there is a blank form which was enclosed with Mr. Fontaine's statement, but you did ask to see the specific one and they have agreed to give it.

We have asked for files on grants. Do we have those yet? They have not yet arrived. We have an agreement that we will get them but we have not received them.

Mr. Laughren: I will not put this in the form of a motion at this point but my recommendation to the committee would be that we now adjourn for the day and prepare our report tomorrow.

Mr. Chairman: Is it reasonable that we would entertain some discussion around that concept? Basically, have we heard enough or do we need to hear more? Would it be helpful for us to entertain that kind of discussion or do you want to get more formal and have motions?

Mr. Laughren: That is why I wanted to discuss it tomorrow when we had a chance to think about it. The reason I say that is I think we are going to need overnight to absorb the contribution by Mr. Treleven earlier today.

Mr. Mancini: It is almost 3:45 p.m. I think the testimony given by our witness today was probably--

Mr. O'Connor: Is this the same--

Mr. Mancini: Yes, because Mr. Fontaine is in an election and I was concerned about Mr. Fontaine getting back to Cochrane North. The original request of Mr. Fontaine was that he be here for one day. I hope that clarifies everyone's memory. I made plans to be here all week. I think it would be a good idea if we adjourned until tomorrow morning before we start to discuss whatever the committee felt would be appropriate at the time.

Mr. O'Connor: I do not favour Mr. Laughren's suggestion that we commence talking about our report either today or tomorrow. I have a list of six or seven people whom I suggest we should hear from by way of witnesses. I would like to use the balance of today, the half-hour or three-quarters of an hour, to discuss among the committee members the merits or demerits of calling those witnesses and/or perhaps documentation instead of the witness, if that is appropriate. I think there is a lot more we would like to hear. I would like to discuss this list of witnesses.

Mr. Treleaven: I was keeping a list from almost the very beginning, certainly from Monday when we had two men from the Ministry of Natural Resources in front of us trying to describe to us timber licences and forest management agreements. After a very short while, it became obvious to me that we needed those two back as witnesses. They were not witnesses. I started to keep a list of people that I personally assumed we were going to have back to explain all kinds of things to us. I have 10 people on it.

At this point, without more witnesses, I could not possibly make a decision on a final report.

3:40 p.m.

Mr. Laughren: Perhaps after you have had time to think about it overnight, you might--

Mr. Chairman: There are a couple of points. Mr. Treleaven raised an issue that has concerned me a bit. You may recall that previously we did a report on witnesses before committees. In that report, we discussed the difficult problem of senior civil servants appearing as witnesses in front of committees. I simply ask that if you contemplate calling people in that category, you refresh your memories on the report that we ourselves wrote and that was reaffirmed by the Ontario Law Reform Commission in its study of the matter. There are some problems in calling certain levels of civil servants before a committee as witnesses. There is a distinction between inviting them to brief us on something and hearing their testimony under oath. There is a conflict there.

Mr. Treleaven: If I recall our report, in a crunch the committee takes priority, but they have the civil service oath of secrecy and that is a certain hurdle and resistance to get past. The bottom line was that when push came to shove, we could enforce testimony.

Mr. Chairman: That is why I did not say we would be prohibited from doing so. I wanted to point out that there is some awkwardness in doing so.

Mr. Sterling: If Mr. Laughren would like to talk about witnesses tomorrow and if he feels it would be more appropriate at that time, that is fine and dandy with our caucus, but I have to indicate that I think it is absolutely essential we have here Ms. Eberts, who advised Mr. Fontaine, and Mr. Martin as to conflict in terms of statements made. I would like to have Mr. Wright here to find out how the conflict-of-interest guidelines were developed and what part he is playing or what his responsibilities are in these matters. This is very important for our later studies in this whole area and as to what we are going to recommend when we get the Aird report. Those are three people I deem to be very important in this whole matter. There are some other questions too. I think the benefits received by Golden Tiger are important as well.

Mr. O'Connor: Carrying on from my colleague's comments, we have heard Mr. Fontaine's evidence for two days. He has brought into question, to put it mildly and charitably, the actions and statements of a whole range of people, whom it is fair to say he has attempted to blame or to bring into question as the effective causes of his difficulties and the reasons he is here.



In doing so, in the case of Mr. Martin, I would say he has come close to slandering the man. In the case of Ms. Eberts, he has suggested she did not do some things that perhaps she ought to have done and that in the other committee of this House she says she did do. In the case of Mr. Wright, it would be interesting to hear what his role was.

In fairness to us in getting at the truth, because there have been conflicts developed and stated by Mr. Fontaine, our chief witness, and in fairness to the people involved, it is almost essential that we call at least those three people. I would add to that list, although perhaps not as a witness in the light of the comments you have just made, the Deputy Minister of Natural Resources to tell us about timber licences, about the procedure that is followed and how it comes about that they are granted to nonexistent companies, and to give us the background from that ministry's point of view.

There might be the Deputy Minister of Northern Development and Mines, unless the documents we received today on the granting of tax concessions and grants explain the information we want in that regard. There is Mr. Levesque from Hearst. A number of things were said by the witness about his involvement in the granting of the forest management agreement and perhaps he could clear up some aspects of that for us.

I think there are at least five or six more people I would like to hear from before I decide what should be done in this case.

Mr. Chairman: I sense that if there is a consensus here, we ought to adjourn for today.

Mr. Martel: Right.

Mr. Chairman: Let me put a couple of things forward for your consideration overnight. The first question we have to resolve is, have we heard the things that are pertinent to the matter that is before the committee--not the broader question of conflict-of-interest guidelines, which we will deal with when we get the Aird report, and not a whole lot of other things; but, in essence, have we heard the gist of the argument from both sides fairly now?

Mr. Treleaven: No.

Mr. O'Connor: No.

Mr. Chairman: I am a little upset, frankly. I asked you to think about it and you said no, without any thought.

Mr. Treleaven: There are still many questions.

Mr. Chairman: I am not asking you to make a decision now.

Interjection: Of course, we have not.

Mr. Chairman: I am saying that ought to be the first question in our minds tomorrow morning. We should resolve that issue. Do we need to hear more witnesses? Do we need more documents? What do we need?

Second, if you decide you want the hearings to proceed further, that more witnesses should be called, we have operated to date on the basis that if any member of the committee made even a suggestion of obtaining a document, we

would get and provide it to you. You may want to change the rules on that. It would be reasonable for me to say from here on in, you have to put a motion if you want a witness called and we will all vote on that. That may be the way to proceed. I am not convinced, frankly, that it is reasonable for me to sit here and take every witness that every member of this committee can think of. We will need a sorting process of sorts.

We have been extremely successful at getting documents from people simply by asking for them, but you are, at the same time, complaining about the number of documents. During this week, I think we can all be forgiven. We got an immense set of paper on Monday and we have had some difficulty finding documents and things like that, but it has also been apparent to me, in the questioning, that you were repeatedly asking for documents you already had. You are going to have to give some consideration as to how you go through that stuff. Probably, given an opportunity to think about those items, we are in a position now to adjourn for tonight and we will begin again tomorrow at 10 a.m.

Any other points?

Mr. O'Connor: On this point, there is a witness or two that it is obvious we are going to want to hear from, and I suggest Mr. Martin is clearly in that category. I do not know how we can leave--

Interjection: Discuss that in the morning.

Mr. O'Connor: What I was going to suggest is that, because time is of the essence, if we decide we do want to hear from him, we can make that request tonight and then speed up the process of him coming, perhaps for tomorrow. I do not know.

Mr. Martel: He lives in Montreal.

Mr. O'Connor: I did not know that. All right.

Mr. Chairman: I want to point out to you, to be blunt about it, that there are people who live all over Ontario who have been mentioned. You have used their names in consideration of who you might have. We are not going to be able to arrange for witnesses to appear in front of this committee tomorrow morning unless they happen to be in this building tomorrow and available. To contemplate that you will have witnesses before you tomorrow, I think is probably unwise. I do not think you will. Any further business?

The committee adjourned at 3:49 p.m.

















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